

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
Beacon Solar Energy Project by)	08-AFC-2
Beacon Solar, LLC)	
_____)	

CALIFORNIA CITY COUNCIL CHAMBERS
CITY HALL
2100 HACIENDA BOULEVARD
CALIFORNIA CITY, CALIFORNIA 93505

REVISED TRANSCRIPT

MONDAY, MARCH 22, 2010

10:03 A.M.

Reported by: Martha L. Nelson, CERT
Contract No. 170-08-001

PETERS SHORTHAND REPORTING CORPORATION
(916) 362-2345

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

HEARING OFFICER, ADVISERS and STAFF PRESENT

Kenneth Celli, Hearing Officer

Galen Lemei, Adviser

Jared Babula, Senior Staff Counsel

Eric K. Solorio, Project Manager

PUBLIC ADVISER

Jim Davis

APPLICANT

Jane E. Luckhardt, Attorney
Downey Brand Attorneys, LLP

Scott Busa, Director
Kenneth Stein, Environmental Manager
Nextera Energy Resources

Sara J. Head, Project Manager
AECOM

INTERVENOR

Tanya Gulesserian, Attorney
Adams Broadwell Joseph and Cardozo
representing California Unions for Reliable Energy

ALSO PRESENT

Don Maben, Supervisor, Second District
Lorelei Oviatt, Acting Planning Director
County of Kern

Richard Booth
Lahontan Regional Water Quality Control Board

ALSO PRESENT

Julie Vance
California Department of Fish and Game

Judy Hohman
United States Fish and Wildlife Service

Bob Scherer, Vice President
Dennis LaMoreaux
Jack Stewart
Rosamond Community Services District

Mike Bevins, Public Works Director
City of California City

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P R O C E E D I N G S

10:15 a.m.

PRESIDING MEMBER DOUGLAS: Good morning, everybody, we're beginning. Welcome to the Beacon Solar Energy Project evidentiary hearing. The Committee members assigned to this case are Commissioner Karen Douglas, which is me, I'm the Presiding Member of the Committee, and Commissioner Jeff Byron.

To my left is Hearing Officer Ken Celli, who will be running the proceeding. And to my right is my advisor, Galen Lemei.

At this point we'll take introductions from the parties beginning with Commission Staff.

MR. BABULA: My name is Jared Babula; I'm Staff Counsel. And I'm sitting next to Eric Solorio, who is the Project Manager.

PRESIDING MEMBER DOUGLAS: Thank you. And applicant.

MS. LUCKHARDT: My name is Jane Luckhardt and I'm Project Counsel.

MR. BUSA: My name is Scott Busa; I'm with the Business Development Group of Nextera Energy. And I'm responsible for the overall development of the project.

1 MR. STEIN: Kenny Stein, Environmental
2 Manager with the Beacon project.

3 PRESIDING MEMBER DOUGLAS: Thank you.
4 And are there intervenors?

5 MS. GULESSERIAN: Good morning. Tanya
6 Gulesserian, Attorney for California Unions for
7 Reliable Energy, intervenor in this proceeding.
8 Thank you.

9 HEARING OFFICER CELLI: Tanya, could you
10 please introduce your --

11 MS. GULESSERIAN: Yes. This is Michael
12 Bias, consultant for CURE.

13 PRESIDING MEMBER DOUGLAS: Thank you.
14 Are there any elected officials here today? Could
15 you please --

16 SUPERVISOR MABEN: Sure. I'm Don Maben,
17 Second District Supervisor, Kern County.

18 PRESIDING MEMBER DOUGLAS: Thank you.
19 Are there any governmental agencies here today?

20 DR. SCHERER: I'm Bob Scherer, Vice
21 President, Rosamond Community Service District.

22 MS. OVIATT: Lorelei Oviatt, Acting
23 Planning Director of Kern County.

24 PRESIDING MEMBER DOUGLAS: Thank you.

25 MR. LaMOREAUX: Dennis LaMoreaux,

1 Rosamond Community Services District.

2 HEARING OFFICER CELLI: I'm sorry, I
3 didn't get your name, sir.

4 MR. STEWART: Jack Stewart, Rosamond
5 Community Services District.

6 HEARING OFFICER CELLI: Got it, thank
7 you.

8 MR BEVINS: I'm Mike Bevins, Public
9 Works Director for the City of California City.

10 MR. SPEAKER: Elected officials.

11 PRESIDING MEMBER DOUGLAS: No, we're on
12 government agencies. Are there other government
13 agencies here?

14 MR. BOOTH: I'm Richard Booth, I'm with
15 Lahontan Water Board.

16 PRESIDING MEMBER DOUGLAS: Any more
17 government agencies represented here today?

18 MS. VANCE: Julie Vance, Fish and Game
19 out of Fresno.

20 MS. HOHMAN: Judy Hohman with Fish and
21 Wildlife Service out of Ventura.

22 PRESIDING MEMBER DOUGLAS: Very good.
23 And then Jim Davis, the Public Adviser
24 representative, is in the back of the room. Jim,
25 if you could wave your hand. He waved a hand with

1 a blue card in it, we'll have an opportunity in a
2 moment to talk about blue cards.

3 All right, at this point I'll turn over
4 the hearing to Hearing Officer Celli to begin the
5 proceeding.

6 HEARING OFFICER CELLI: Thank you,
7 Chairman. Good morning. Can everyone hear me
8 okay?

9 I wanted to just first say that we are
10 also simultaneously webcasting this hearing today.

11 And there are people who are on the phone who can
12 hear us, but we can't hear you because I have
13 muted you until the public comment period. So I
14 know you're there.

15 And if you need to you can send me a
16 chat message, if necessary. But I don't know if
17 I'm going to be able to get to it immediately.
18 But just so you know, you will have a chance to
19 make a public comment later on in the proceedings.

20 MR. BABULA: Actually, Ken, I have to
21 ask you. I was going to have the Air District
22 call in, and so they might be on the line now.
23 And then also Mark Hesters and Sudath were going
24 to call in at 10:00 so we could tell them when to
25 call back for transmission, because I believe we

1 weren't able to resolve that with CURE. So
2 they're teed up to just have a short discussion on
3 transmission.

4 HEARING OFFICER CELLI: Thank you, Mr.
5 Babula. I just want you to know that right now I
6 have an A. Brant, Elizabeth Klebanur, Klebanur,
7 I'm sorry, K-l-e-b-a-n-u-r, Casey Box, Rachel Cos
8 was on, but then is off.

9 And then I have four unnamed callers,
10 which one of whom is probably Rachel, and one of
11 them is Elizabeth Klebanur, because what happens
12 is people hang up and then they call back.

13 Just so people are aware, it's a lot
14 easier if you actually use the WebEx system, go
15 online as explained in the notice. And then the
16 system will call you, and you won't have to call
17 in. And then we can see that you're on the line
18 and you can raise your hand if you want to make a
19 comment later.

20 So, all your witnesses will need to do
21 is call in to WebEx -- well, I mean the WebEx will
22 call them. They'll just be another, and they'll
23 identify themselves. And we'll know that they're
24 them.

25 As to the Public Adviser, Jim Davis, who

1 is standing in the back holding up these blue
2 cards. If you wish to make a comment today, just
3 go up to see Jim Davis and fill out a blue card.
4 And at the public comment section of our hearings
5 today we will call your names in the order that we
6 receive them.

7 The evidentiary hearing is a formal
8 adjudicatory proceeding to receive evidence into
9 the formal evidentiary record from the parties.
10 Only the parties, which are in this case the
11 applicant, the intervenor CURE, California Unions
12 for Reliable Energy, and Energy Commission Staff,
13 may present evidence for introduction into the
14 formal evidentiary record, which is the only
15 evidence upon which the Commission may base its
16 decision under the law.

17 Technical rules of evidence are
18 generally followed. However any relevant,
19 noncumulative evidence may be admitted if it is
20 the sort of evidence upon which responsible
21 persons are accustomed to rely in the conduct of
22 serious affairs.

23 Testimony offered by the parties shall
24 be under oath. Each party has the right to
25 present and cross-examine witnesses, introduce

1 exhibits and to rebut evidence of another party.

2 Questions of relevance will be decided
3 by the Committee. Hearsay evidence may be used to
4 supplement or explain other evidence, but shall
5 not be sufficient, in itself, to support a finding
6 under our regulations section 1212, Title 20.

7 The Committee will rule on motions and
8 objections. The Committee may take official
9 notice of matters within the Energy Commission's
10 field of competence, and of any fact that may be
11 judicially noticed under the California courts.

12 The official record of this proceeding
13 includes sworn testimony of the parties'
14 witnesses, the reporter's transcript of the
15 evidentiary hearing, the exhibits received into
16 evidence, briefs, pleadings, orders, notices and
17 comments submitted by members of the public.

18 The Committee's decision will be based
19 solely on the record of competent evidence in
20 order to determine whether the project complies
21 with the applicable law.

22 Members of the public who are not
23 parties are welcome and invited to observe these
24 proceedings. There will also be an opportunity
25 for the public to provide comment before we close

1 this hearing later today, this evening.

2 Depending on the numbers of persons who
3 wish to speak the Committee may limit the time
4 allowed for each speaker. This public comment
5 period is intended to provide an opportunity for
6 persons who attend the hearing in person to
7 address the Committee.

8 It is not an opportunity to present
9 written, recorded or documentary materials.
10 However, such materials may be docketed and
11 submitted to the Energy Commission for inclusion
12 in the administrative record.

13 Members of the public who wish to speak
14 should fill out a blue card provided by the Public
15 Adviser. And if you would prefer not to speak
16 publicly, which you do not have to, but would like
17 to submit a written comment, the blue card has a
18 space to do so.

19 The witness list and the exhibit list
20 have been distributed to the parties
21 electronically. And the parties were asked to
22 bring copies for their use today. We will use
23 these lists to organize receipt of evidence into
24 the record.

25 There are several uncontested topics

1 identified in the topic and witness list. None of
2 the parties has filed any objection to submittal
3 of these topics by declaration.

4 First, the way that we will proceed is
5 that we will allow the applicant to offer into
6 evidence the relevant sections of the AFC, which
7 is the application for certification. You're
8 going to hear us talk about the AFC a lot today.
9 You may hear us talk about the FSA or the SA,
10 which is the final staff assessment or staff
11 assessment. So hopefully we'll keep you informed
12 of the acronyms as they fly by.

13 But the applicant's evidence is the AFC,
14 relevant supplements and testimony in support of
15 the uncontested topics.

16 Then we will ask staff to offer those
17 sections of the FSA, final staff assessment, and
18 supplemental testimony, which constitute their
19 testimony in support of the uncontested topics.

20 Finally, CURE. We refer to CURE as
21 CURE, which is California Unions for Reliable
22 Energy, C-U-R-E. CURE will offer their evidence
23 of the uncontested topics in the record.

24 After that parties may offer their
25 listed exhibits as to the contested topics into

1 the evidence.

2 We will proceed through the uncontested
3 topics at this time. And applicant and staff's
4 project managers will be sworn. Marlee, are you
5 going to swear them in? If you would, just have
6 Mr. Solorio and Mr. Busa, or is it Mr. Stein? If
7 you would please stand and be sworn at this time.
8 Whereupon,

9 ERIC SOLORIO and SCOTT BUSA
10 were called as witnesses herein, and after first
11 having been duly sworn, were examined and
12 testified as follows:

13 HEARING OFFICER CELLI: The parties
14 agree that the following topics set forth in the
15 application for certification and the final staff
16 analysis are undisputed; and that evidence and
17 testimony on these topics shall be solely entered
18 by declaration.

19 The order that I'm going to proceed in
20 is the order that they showed up in our witness
21 list that we provided at the prehearing
22 conference.

23 Executive summary; traffic and
24 transportation; transmission line safety and
25 nuisance; facility design; geology and

1 paleontology; power plant efficiency; air quality;
2 public health; socioeconomic resources; noise and
3 vibration; power plant reliability; worker safety
4 and fire protection and land use.

5 So those are the topic areas that are
6 uncontested by the parties, and we're going to
7 accept that evidence by way of declaration.

8 We would move first with the applicant.

9 If I could just have a moment so I can get your
10 list out. Applicant, do you wish to move evidence
11 into the record at this time with regard to
12 executive summary?

13 MS. LUCKHARDT: Applicant moves exhibit
14 number 1, 58, 77, 93, 124, 125, 279, 289, 309 and
15 322 all on executive summary into the record at
16 this time.

17 HEARING OFFICER CELLI: Any objection,
18 staff?

19 MR. BABULA: No objection.

20 HEARING OFFICER CELLI: Any objection
21 from CURE?

22 MS. GULESSERIAN: No objection.

23 HEARING OFFICER CELLI: I'm just going
24 to ask, please, Ms. Luckhardt, if you wouldn't
25 mind, for the record saying exhibit 1 is AFC

1 section 1 executive summary. Exhibit 2 or exhibit
2 58 is slide presentation. And just a quick
3 identifier so we know in the record what those
4 exhibits are.

5 MS. LUCKHARDT: Trying to be efficient.

6 HEARING OFFICER CELLI: And I --

7 MS. LUCKHARDT: Would you like me to go
8 back through that?

9 HEARING OFFICER CELLI: -- I'd greatly
10 appreciate it, but that's how we should --

11 MS. LUCKHARDT: Do you want me to go
12 back through that?

13 HEARING OFFICER CELLI: That's great.

14 MS. LUCKHARDT: Exhibit 1 is AFC section
15 1; exhibit 58 is the slide presentation from the
16 informational hearing; exhibit 77 are the
17 responses to questions from Rancho Seco residents
18 set 1; exhibit 93 is responses to questions from
19 Rancho Seco residents set 2; 124 is the PSA
20 comments, the introduction.

21 Exhibit 125 are the PSA comments,
22 executive summary; 279 is the declaration of
23 Kenneth Stein; exhibit 289 is declaration of Meg
24 Russell; exhibit 309 is the declaration of Scott
25 Busa; and exhibit 322 is the declaration of

1 Kenneth Stein on overriding considerations.

2 HEARING OFFICER CELLI: Thank you.

3 Exhibit 1, 58, 77, 93, 124, 125, 279, 289, 209 and
4 309 for identification are received into evidence.

5 Next is traffic and transportation.

6 MS. LUCKHARDT: Are you going to move
7 staff individually by subject area, or are you
8 going to do it --

9 HEARING OFFICER CELLI: Staff has how
10 many? You have about six exhibits?

11 MR. BABULA: Well, we've got those.
12 Exhibit 500 would be the FSA. And then these
13 other, it's going to be off now, 500 is the FSA,
14 so that could just come in, because that's all
15 declaration all at once, or for the components
16 that aren't in contention.

17 HEARING OFFICER CELLI: I have 500 is
18 the FSA; 501 is the soil and water; 502 is bio;
19 503 is cultural; 504 is HTF, fluid leak
20 prevention.

21 MR. BABULA: Right, but that's --

22 HEARING OFFICER CELLI: And 505 is
23 visual, correct?

24 MR. BABULA: Right. Well, the 504, I
25 believe, is part of the HTF, which is contested,

1 so that wouldn't come in in this initial part
2 here.

3 These other ones I have witnesses to
4 sponsor, but these became post-FSA, so there's no
5 -- I'm not sure how you wanted to do --

6 HEARING OFFICER CELLI: You have
7 declarations?

8 MR. BABULA: Well, I do in the FSA, but
9 these were supplemental. If you want to just use
10 the same declaration for the parts that were
11 modifications to the conditions of certification,
12 then we can go ahead and just incorporate it
13 through the declarations and the authors. I
14 wasn't sure.

15 Now, 504 there is a declaration for
16 Geoffrey Lesh, so that could come in. And then
17 505 has a declaration. So we're okay there. 506,
18 I have the Cal City and Rosamond people here to
19 sponsor exhibit 506.

20 So I was going to do it when we get to
21 each section, since those people would be up here.

22 HEARING OFFICER CELLI: At this time is
23 there any objection from staff to the receipt of
24 exhibit 500 into the record, I'm sorry, from
25 applicant?

1 MS. LUCKHARDT: Applicant has no
2 objection.

3 HEARING OFFICER CELLI: CURE, any
4 objection to 500?

5 MS. GULESSERIAN: CURE has no objection.

6 HEARING OFFICER CELLI: Okay, at this
7 time 500 has been received into evidence. That is
8 the final staff assessment received into evidence.

9 Anything else we can take care of
10 efficiently right now that's not contested and has
11 a declaration supporting it?

12 MR. BABULA: Well, 501, 502, 503, which
13 would be changes that we agreed to with the
14 applicant and with the conditions of certification
15 of those areas, there's been other more recent
16 versions of them which we discussed at the
17 prefiling conference. We would just kind of
18 stipulate with the applicant when we agreed with.

19 So I wasn't exactly sure how you wanted to handle
20 those.

21 HEARING OFFICER CELLI: Here's what I'm
22 thinking of doing. In the interests of time,
23 then, is there a motion by staff to conditionally
24 introduce exhibits 501 through 505. And what we
25 will do then is I'm planning on receiving that

1 evidence subject to objection later as we get into
2 those topic areas.

3 So, is that your motion?

4 MR. BABULA: I could make that motion,
5 yeah.

6 HEARING OFFICER CELLI: Please do.

7 MR. BABULA: Okay, I would make a motion
8 to receive exhibits 501, 502, 503, 504, 505 and
9 506 into the record. And then --

10 HEARING OFFICER CELLI: What is exhibit
11 506?

12 MR. BABULA: That would be, 506 is the
13 proposal from California City and the Rosamond.
14 It's the docketed material that had been submitted
15 to the dockets over the last year regarding the
16 proposed cost and alignment of the different
17 recycled water options.

18 HEARING OFFICER CELLI: Applicant, any
19 objection to exhibits 501, 502, 503, 504, 505 and
20 506 being entered into evidence at this time?

21 MS. LUCKHARDT: We have no objection.

22 HEARING OFFICER CELLI: CURE, any
23 objection to exhibits 501, 502, 503, 504, 505 and
24 506 being received into evidence at this time?

25 MS. GULESSERIAN: CURE has no objection.

1 HEARING OFFICER CELLI: Thank you.

2 Exhibits 500, 501, 502, 503, 504, 505 and 506 will
3 be received and are received into evidence.

4 We are now on traffic and
5 transportation. Applicant.

6 MS. LUCKHARDT: Applicant moves exhibit
7 numbers 17, section 5.3 of the AFC; exhibit number
8 118, the preliminary PSA comments on traffic and
9 transportation; exhibit number 143, the actual PSA
10 comments on traffic and transportation; exhibit
11 173, section of the project design refinements,
12 section 1.4.6. Exhibit 180, project design
13 refinements, section 4.2.4.

14 Exhibit 252, declaration of Duane
15 McCloud; exhibit 267, declaration of Jared Foster;
16 exhibit 278, declaration of John Wilson.

17 HEARING OFFICER CELLI: CURE, any
18 objection to exhibits 17, 118, 143, 173, 180, 252,
19 267 and 278 being admitted into evidence?

20 MS. GULESSERIAN: CURE has no
21 objections.

22 HEARING OFFICER CELLI: Staff, any
23 objection to 17, 118, 143, --

24 MR. BABULA: No objections.

25 HEARING OFFICER CELLI: Thank you.

1 Exhibits 17, 118, 143, 173, 180, 252, 267 and 278
2 for identification are received into evidence
3 under the topic of traffic and transportation.
4 Thank you.

5 Transmission line safety and nuisance.

6 MS. LUCKHARDT: The applicant moves
7 exhibit 18, AFC section 514; exhibit 44, AFC
8 appendix K-2; exhibit 67, response to CEC data
9 requests 50 through 53; exhibit 76, supplemental
10 response to data requests 50 to 52, with
11 attachment DR-50.

12 Exhibit 192, the project design
13 refinements, figure 6; exhibit 255, declaration of
14 Duane McCloud; exhibit 313, declaration of Scott
15 Busa; exhibit 320, declaration of Steve Richards;
16 exhibit 334, I think we will probably bring in
17 under transmission system engineering unless
18 there's no objection to bringing that in at this
19 time.

20 HEARING OFFICER CELLI: CURE, any
21 objection to 334 coming in at this time?

22 MS. GULESSERIAN: CURE has no
23 objections.

24 HEARING OFFICER CELLI: Very good. And
25 18, 44, 67, 76, 192, 255, 313 and 320, any

1 objection by CURE?

2 MS. GULESSERIAN: CURE has no
3 objections.

4 HEARING OFFICER CELLI: Staff, any
5 objection to those?

6 MR. BABULA: No objections.

7 HEARING OFFICER CELLI: Thank you, at
8 this time 18, 44, 67, 76, 192, 255, 313, 320 and
9 334, marked for identification, are now received
10 into evidence as exhibits 18, 44, 67, 76, 192,
11 255, 313, 320 and 334.

12 Facility design.

13 MS. LUCKHARDT: In the area of facility
14 design, applicant moves exhibit number 26, the AFC
15 appendix C-1; exhibit 27, AFC appendix C-2;
16 exhibit 28, AFC appendix C-3; exhibit 29, AFC
17 appendix C-4; exhibit 30, AFC appendix C-5;
18 exhibit 31, AFC appendix C-6.

19 Exhibit 95, email from Kenny Stein;
20 exhibit 98, email from Kenny Stein dated 12/22/08;
21 exhibit 101 is another email from Kenny Stein
22 dated 1/13/09.

23 Exhibit 147, the PSA comments on
24 engineering; exhibit 149, the PSA comments on
25 general conditions; exhibit 154, the project

1 design refinement section 1 and section 5; exhibit
2 155, the project design refinement section 2.1.

3 Exhibit 157, project design refinement
4 section 2.1.2; exhibit 158, project design
5 refinement section 2.1.3; exhibit 159, project
6 design refinement section 2.1.5; exhibit 160,
7 project design refinement section 2.1.6.

8 Exhibit 161, project design refinement
9 section 2.1.7; exhibit 162, project design
10 refinement section 2.1.8; exhibit 165, project
11 design refinement section 2.2.

12 Exhibit 190, project design refinement
13 figure 3; exhibit 191, project design refinement
14 figure 5; exhibit 196, project design refinement
15 attachment 2; exhibit 197, project design
16 refinements attachment 3.

17 Exhibit 239, declaration of Bob Anders;
18 exhibit 244, declaration of Dan Sampson; exhibit
19 256, declaration of Duane McCloud; exhibit 264,
20 declaration of Janine Forrest; exhibit 270,
21 declaration of Jared Foster; exhibit 286,
22 declaration of Kenneth Stein.

23 Exhibit 311, declaration of Scott Busa
24 on facility design. And exhibit 316, which is
25 another declaration of, or declaration of Scott

1 Stern on facility design; exhibit 319, declaration
2 of Steve Richards on facility design.

3 HEARING OFFICER CELLI: Thank you. Any
4 objection to any of those exhibits marked for
5 identification by CURE?

6 MS. GULESSERIAN: CURE has no
7 objections.

8 HEARING OFFICER CELLI: Any objection
9 from staff on the exhibits for facility design?

10 MR. BABULA: No, no objections. I would
11 like to make a suggestion. Staff and the
12 applicant have resolved all our issues. And I
13 would accept all these things coming in, instead
14 of doing one by one. Can we just --

15 HEARING OFFICER CELLI: I just need to
16 get it and have them in the record so we can stamp
17 them.

18 MR. BABULA: Can we just submit the
19 exhibit list and say they were all admitted,
20 unless CURE has a specific objection to one?

21 HEARING OFFICER CELLI: Actually, you
22 know, I have to make the transcript. So it's got
23 to be in the transcript.

24 MR. BABULA: Okay.

25 HEARING OFFICER CELLI: So, my

1 apologies. And everyone, your patience is noted.

2 I have to put it in the record.

3 So, with that, the exhibits marked for
4 identification 26, 27, 28, 29, 30, 31, 95, 98,
5 101, 147, 149, 154, 155, 157, 158, 159, 160, 161,
6 162, 165, 190, 191, 196, 197, 239, 244, 256, 264,
7 270, 286, 311, 316 and 319 are received into
8 evidence.

9 Geology and paleontology.

10 MS. LUCKHARDT: Applicant moves exhibit
11 9, AFC section 5.5; exhibit 24, AFC appendix B.1;
12 exhibit 25, AFC appendix B.2; exhibit 54, the data
13 adequacy supplement on geological hazards; exhibit
14 236, declaration of Bob Anders; exhibit 293, the
15 declaration of Mike Flack. And that should be, on
16 293, one of the corrections that we found on
17 Friday was it should say geology, not
18 geoarcheology. It's just simply a typographical
19 error.

20 HEARING OFFICER CELLI: Okay. And then
21 we have paleontology on page 8 of your last --

22 MS. LUCKHARDT: In the area of
23 paleontology, applicant moves exhibit number 13,
24 AFC section 5.9; exhibit number 39, AFC section H,
25 or appendix H; exhibit 148, the PSA comments on

1 geology and paleontology; exhibit 201, the project
2 design refinements, attachment 4-D; exhibit 241,
3 declaration of Kara Pasetti; exhibit 284,
4 declaration of Kenneth Stein.

5 HEARING OFFICER CELLI: Any objection to
6 these exhibits by CURE?

7 MS. GULESSERIAN: CURE has no
8 objections.

9 HEARING OFFICER CELLI: Any objection by
10 staff?

11 MR. BABULA: No objections.

12 HEARING OFFICER CELLI: Exhibits marked
13 for identification 9, 24, 25, 54, 236, 293, 13,
14 39, 148, 201, 241, 284 are received into evidence.

15 Power plant efficiency.

16 MS. LUCKHARDT: For power plant
17 efficiency applicants' exhibits in this area are
18 contained within project description and facility
19 design.

20 HEARING OFFICER CELLI: Okay. So that
21 means that when we get to, we've already received
22 facility project description. Or not project
23 description if there was an issue but executive
24 summary. So those were received in the executive
25 summary. And then there's going to be others

1 under project description?

2 MS. LUCKHARDT: Correct.

3 HEARING OFFICER CELLI: Air quality.

4 MS. LUCKHARDT: Okay, under air quality
5 applicant moves exhibit 6, AFC section 5-2;
6 exhibit 33, AFC appendix E; exhibit 34, AFC
7 appendix E-4; exhibit 50, the application for the
8 final determination of compliance.

9 Exhibit 51, the data adequacy supplement
10 on air quality; exhibit 60, responses to CEC data
11 requests 1 through 3 and 7 through 12; exhibit 61,
12 responses to CEC data request, attachment DR-10;
13 exhibit 72, supplemental responses to CEC data
14 request 4, 5, 6 and 12, and attachment DR-5.

15 Exhibit 96, the email from Sara Head to
16 Will Walters, dated 12/12/08; exhibit 99,
17 construction greenhouse gas calculations; exhibit
18 113, the preliminary PSA comments on air quality;
19 exhibit 128, the PSA comments on air quality.

20 Exhibit 163, the project design
21 refinements section 2.1.9; exhibit 170, project
22 design refinements section 4.1.1; exhibit 176,
23 project design refinements section 4.2.1; exhibit
24 204, project design refinements attachment 7-A;
25 exhibit 205, project design refinements attachment

1 7-B; exhibit 206, project design refinements
2 attachment 7-C; exhibit 207, project design
3 refinements attachment 7-D.

4 Exhibit 209, air modeling files; exhibit
5 211, revised application for final determination
6 of compliance; exhibit 212 is something that was
7 not filed in the proceeding, so we are not
8 offering it into evidence.

9 Exhibit 214, response to air quality
10 questions from a workshop; exhibit 232 is the Kern
11 County Air Pollution Control District revised
12 final determination of compliance.

13 Exhibit 247, a declaration of Duane
14 McCloud on air quality; exhibit 259, the
15 declaration of Glenn King in air resources;
16 exhibit 261, the declaration of Howard Valentine;
17 exhibit 281, the declaration of Kenneth Stein in
18 air quality; exhibit 301, the declaration of Russ
19 Kingsley. There are two of these, this is the
20 first one on air quality. Exhibit 302 is another
21 declaration of Russ Kingsley on air quality.

22 We also have two from Sara Head, 305 is
23 the first declaration of Sara Head on air quality.

24 And exhibit 306 is the second declaration from
25 Sara Head on air quality.

1 HEARING OFFICER CELLI: Thank you. Any
2 objection to these exhibits from CURE?

3 MS. GULESSERIAN: CURE has no
4 objections.

5 HEARING OFFICER CELLI: Any objection
6 from staff?

7 MR. BABULA: No objections.

8 HEARING OFFICER CELLI: Very well,
9 exhibits marked for identification 6, 33, 34, 50,
10 51, 60, 61, 72, 96, 99, 113, 128, 163, 170, 176,
11 204, 205, 206, 207, 209, 211, 214, 232, 247, 259,
12 261, 281, 301, 302, 305 and 306 will be admitted
13 into evidence.

14 And 212 was withdrawn by the applicant.
15 Public health.

16 MS. LUCKHARDT: In public health,
17 applicant offers exhibit 14, AFC section 5-10;
18 exhibit 138, the PSA comments on public health;
19 exhibit 139, the PSA comments, attachment public
20 health-1, which is the health risk assessment.

21 Exhibit 177, the project design
22 refinements section 4.2.1.2; exhibit 260, the
23 declaration of Greg Wolf; and exhibit 307, the
24 declaration of Sara Head on public health.

25 HEARING OFFICER CELLI: Any objection to

1 these exhibits, CURE?

2 MS. GULESSERIAN: CURE has no objection.

3 HEARING OFFICER CELLI: Staff, any
4 objection?

5 MR. BABULA: No objection.

6 HEARING OFFICER CELLI: Exhibits marked
7 for identification 14, 138, 139, 177, 260 and 307
8 will be received into evidence.

9 Socioeconomic resources.

10 MS. LUCKHARDT: In the area of
11 socioeconomics, applicant offers exhibit number
12 15, AFC section 511; exhibit number 56, data
13 adequacy supplement on socioeconomics; exhibit
14 number 65, responses to CEC data requests 36
15 through 42; exhibit 81, responses to CEC data
16 requests 81 through 92; and exhibit 234, the
17 declaration of Addie Olazabal on socioeconomics.

18 HEARING OFFICER CELLI: Any objection to
19 these exhibits, CURE?

20 MS. GULESSERIAN: CURE has no objection.

21 HEARING OFFICER CELLI: Staff?

22 MR. BABULA: No objections.

23 HEARING OFFICER CELLI: Thank you. At
24 this time exhibits marked for identification 15,
25 56, 65, 81 and 234 will be received into evidence.

1 Next we have --

2 MS. LUCKHARDT: Noise and vibration.

3 HEARING OFFICER CELLI: Noise and
4 vibration.

5 MS. LUCKHARDT: Applicant offers in the
6 area of noise and vibration exhibit 12, AFC
7 section 5.8; exhibit 117, the preliminary PSA
8 comments section 2-E; exhibit 137, the PSA
9 comments on noise; and exhibit 250, the
10 declaration of Duane McCloud on noise.

11 HEARING OFFICER CELLI: Any objection,
12 CURE?

13 MS. GULESSERIAN: CURE has no
14 objections.

15 HEARING OFFICER CELLI: Staff?

16 MR. BABULA: No objections.

17 HEARING OFFICER CELLI: Exhibits marked
18 for identification 12, 117, 137 and 250 will be
19 received into evidence.

20 Power plant reliability.

21 MS. LUCKHARDT: In the area of power
22 plant reliability those areas are covered within
23 applicant's testimony on facility design and
24 project description.

25 HEARING OFFICER CELLI: Okay. Worker

1 safety and fire protection.

2 MS. LUCKHARDT: In the area of worker
3 safety the applicant offers exhibit number 22, AFC
4 section 5-18; exhibit number 146, the PSA
5 comments; exhibit number 183, the project design
6 refinements section 4.2.7; exhibit number 228, the
7 PSA comments, attachment worker safety-1; exhibit
8 254, the declaration of Duane McCloud on worker
9 safety; exhibit number 269, the declaration of
10 Jared Foster on worker safety; and exhibit number
11 292, the declaration of Mike Arvidson on worker
12 safety.

13 HEARING OFFICER CELLI: CURE, any
14 objection to the exhibits?

15 MS. GULESSERIAN: CURE has no
16 objections.

17 HEARING OFFICER CELLI: Staff, any
18 objection?

19 MR. BABULA: No objections.

20 HEARING OFFICER CELLI: Very well,
21 exhibits marked for identification 22, 146, 183,
22 228, 254, 269 and 292 are received into evidence.

23 Land use.

24 MS. LUCKHARDT: Applicant offers the
25 following exhibits in the area of land use.

1 Exhibit number 11, AFC section 5.7; exhibit number
2 46, AFC appendix K-4; exhibit number 47, AFC
3 appendix K-5; exhibit number 55, the data adequacy
4 supplement on land use.

5 Exhibit number 57, correspondence from
6 Kern County Planning Department, dated 5/1/08;
7 exhibit 111, the boundary survey sheets; exhibit
8 122, the Kern County Resolutions approving the
9 land use applications; exhibit 136, the PSA
10 comments on land use.

11 Exhibit 213, the application for lot
12 line adjustment; exhibit 223, the response to
13 letter from John Musak.

14 Exhibit 249, the declaration of Duane
15 McCloud on land use; exhibit 275, the declaration
16 of Jerry McLees on land use; exhibit 283, the
17 declaration of Kenneth Stein on land use; exhibit
18 312, the declaration of Scott Busa on land use.

19 HEARING OFFICER CELLI: Thank you. Any
20 objection to these land use exhibits from CURE?

21 MS. GULESSERIAN: CURE has no objection.

22 HEARING OFFICER CELLI: From staff?

23 MR. BABULA: No objection.

24 HEARING OFFICER CELLI: Thank you.

25 Exhibits marked for identification 11, 46, 47, 55,

1 57, 111, 122, 136, 213, 223, 249, 275, 283 and 312
2 are received into evidence at this time.

3 Now, folks, what we just did was we took
4 in a whole lot of evidence without having to hear
5 people testify about it. That was hugely
6 efficient and I appreciate your sitting through
7 that.

8 And you also have to appreciate, just in
9 listening to the titles of some of these exhibits,
10 just how complicated this process is and what
11 needs to be done in order to get a power plant put
12 in, even a solar power plant in California.

13 I have a question, since those were the
14 uncontested topics as of the time of our
15 prehearing conference a week ago. Are there any
16 new uncontested topics that were worked out or
17 resolved in the meanwhile? Applicant?

18 MS. LUCKHARDT: Yes. Per your direction
19 we met with staff and resolved outstanding
20 concerns on conditions of certification regarding
21 cultural resources. And we believe that that can
22 be taken by declaration at this time.

23 HEARING OFFICER CELLI: Any objection,
24 CURE?

25 MS. GULESSERIAN: CURE has no objection.

1 HEARING OFFICER CELLI: Staff, any
2 objection to taking cultural by declaration?

3 MR. BABULA: No objection.

4 HEARING OFFICER CELLI: Thank you. With
5 that then, the applicant, please introduce your
6 exhibits with regard to cultural.

7 MS. LUCKHARDT: The applicant moves
8 exhibit number 8, AFC section 5.4; exhibit number
9 37, AFC appendix G.1; exhibit number 38, AFC
10 appendix G.2; exhibit number 53, the data adequacy
11 supplement on cultural resources; exhibit 64,
12 responses to CEC data requests 26 through 35 with
13 attachments; exhibit 74, supplemental response to
14 data requests 30, 32, 34 and 35 with attachments
15 DR-34 and DR-35.

16 Exhibit 80, responses to CEC data
17 requests 79 through 80; exhibit 85, supplemental
18 response to data requests 30, 32 and 34 with
19 attachment DR-35; exhibit 91, and this is the
20 confidential workshop response to data request 34.

21 Exhibit 104, the geoarcheology trenching
22 plan; exhibit 107, preliminary results from the
23 geoarcheology study, supplemental response to data
24 request 34; exhibit 112, the email response to
25 request for clarification on resource evaluations.

1 Exhibit 115, the preliminary PSA
2 comments, section 2-C; exhibit 123, land form
3 structure and archeological sensitivity in the
4 Beacon Solar Energy Project area. That's a
5 report.

6 Exhibit 132, the PSA comments on
7 cultural resources; exhibit 133, the PSA comments
8 attachment Cul-1; exhibit 134, the PSA comments
9 attachment Cul-2; exhibit 200, the project design
10 refinements attachment 4-C; exhibit 215, response
11 to request regarding Beacon Solar Energy Project
12 subsurface investigations dated 7/22/09.

13 Exhibit 242, the declaration of Craig
14 Young; exhibit 300, the declaration of Rebecca
15 Apple; exhibit 329, the rebuttal testimony of
16 Rebecca Apple; exhibit 330, the rebuttal testimony
17 of Kevin Stein; exhibit 331, the rebuttal
18 testimony of Duane McCloud.

19 Applicant would also like to offer
20 exhibit 339, which is the revised recommended
21 conditions for certification that were agreed upon
22 with Commission Staff, with one correction. And
23 the correction, there's one additional sentence
24 that needs to be added.

25 That sentence needs to be added to

1 cultural-8, condition of certification cultural-8.

2 If you turn to page cultural-21, at the bottom of
3 the first full paragraph. The first full
4 paragraph begins with "Full-time archeological
5 monitoring".

6 At the end of the underline, the
7 underlined sentence reads, "Where scrapers are
8 used for excavation, full-time archeological
9 monitoring shall require one monitor to observe
10 the placement of and inspect dump material for
11 every four monitors observing excavation."

12 The new sentence should read, "For
13 excavation areas where scrapers are not used for
14 excavation, one monitor shall both observe the
15 location of active excavation and inspect the
16 dumped material."

17 Would you like me to read that a second
18 time?

19 HEARING OFFICER CELLI: Please.

20 MS. LUCKHARDT: "For excavation areas
21 where scrapers are not used for excavation, one
22 monitor shall both observe the location of active
23 excavation and inspect the dumped material."

24 Would you like me to read that a second
25 time?

1 HEARING OFFICER CELLI: Please.

2 MS. LUCKHARDT: "For excavation areas
3 where scrapers are not used for excavation, one
4 monitor shall both observe the location of active
5 excavation and inspect the dumped material."

6 HEARING OFFICER CELLI: Thank you.

7 MS. LUCKHARDT: Period. I'm sorry.

8 HEARING OFFICER CELLI: Is that all for
9 cultural?

10 MS. LUCKHARDT: That is everything we
11 have for cultural.

12 HEARING OFFICER CELLI: Any objection,
13 CURE?

14 MS. GULESSERIAN: CURE has no objection.

15 HEARING OFFICER CELLI: Staff?

16 MR. BABULA: No objection.

17 HEARING OFFICER CELLI: Very well. You
18 know, you may need to keep the metal away from
19 that thing. So keep your metal pen away from that
20 mic, please.

21 MR. BABULA: It's probably plastic.

22 (Laughter.)

23 HEARING OFFICER CELLI: Maybe it's your
24 cuff links or watch.

25 MR. BABULA: Yeah.

1 HEARING OFFICER CELLI: I don't know.

2 MR. BABULA: It's my Rolex.

3 (Laughter.)

4 MR. BABULA: My plastic one.

5 HEARING OFFICER CELLI: Cultural
6 resources. So this is now an uncontested area.
7 Exhibits marked for identification 8, 37, 38, 53,
8 64, 74, 80, 85, 91, 104, 107, 112, 115, 123, 132,
9 133, 134, 200, 215, 242, 300, 329, 330 and 331
10 will be received into evidence.

11 MS. LUCKHARDT: Will 339 also be
12 received?

13 HEARING OFFICER CELLI: And 339 will be
14 received into evidence.

15 MS. LUCKHARDT: Thank you.

16 HEARING OFFICER CELLI: So, thank you
17 very much. We do appreciate that. Is there
18 anything else that we can take in that's
19 uncontested?

20 MS. LUCKHARDT: The other two areas
21 where we were able to resolve conditions of
22 certification were in water resources and
23 biological resources. Both of which, we
24 understand, are contested and so should probably
25 appropriately be brought in at that time.

1 HEARING OFFICER CELLI: Thank you.

2 CURE, did you have any uncontested evidence to
3 bring in at this time?

4 MS. GULESSERIAN: We do not. At your
5 direction we did attempt to meet with the parties
6 on the issue areas you addressed in the prehearing
7 conference. We were not able to reach resolution
8 on those issues.

9 HEARING OFFICER CELLI: Thank you very
10 much. So, with that, now we've received all the
11 evidence from applicant, staff and CURE on
12 uncontested matters.

13 We are now going to move to disputed
14 topics. The following topics were considered and
15 disputed at the prehearing conference. The
16 Committee will receive evidence in the form of
17 written and live testimony, cross-examination and
18 documentary evidence now, unless the parties are
19 prepared to stipulate to testimony by declaration.

20 The order that we would proceed in
21 today, let me find my note on that, was biology
22 would go first. There was a request that we
23 insert transmission systems engineering right
24 after biology so that we can make sure everybody's
25 witnesses are here. Yes, that's uncontested by

1 CURE.

2 And then we would go with soil and
3 water. Is that what you --

4 MR. BABULA: That would be soil and
5 water after bio.

6 HEARING OFFICER CELLI: I'm sorry, say
7 again?

8 MS. LUCKHARDT: We have -- go ahead.

9 MR. BABULA: Okay, well, we were going
10 to do bio first, and then go to soil and water.

11 HEARING OFFICER CELLI: That was the
12 plan.

13 MR. BABULA: Right.

14 HEARING OFFICER CELLI: There was a
15 request by applicant to insert visual because
16 there was a problem with your witnesses actually.

17 MS. LUCKHARDT: Yeah, we have witness
18 availability issues today with visual resources.
19 And we moved that witness from Tuesday at the
20 request of the Hearing Officer to see if we could
21 hear all topics today. But there are constraints
22 because he must fly out from LAX at 6:00 tonight.

23 MR. BABULA: I think Mark Hamblin will
24 be here, but probably more like around 12:00. I
25 think he took the eight, so he'll get in at ten

1 and drive here.

2 HEARING OFFICER CELLI: That's fine.
3 Biology's going to take a little time. And we
4 took up almost an hour just getting in the
5 uncontested evidence. And so it seems like that
6 will probably work if there's no objection to
7 taking visual between soil and water and biology.
8 CURE?

9 MS. GULESSERIAN: There's no objection
10 to taking visual. I think I misunderstood that
11 transmission system engineering --

12 HEARING OFFICER CELLI: I'm sorry.

13 MS. GULESSERIAN: Okay. Thank you.

14 HEARING OFFICER CELLI: Keep me honest,
15 I might be thinking one thing and saying another.
16 I meant visual.

17 MS. GULESSERIAN: CURE has no objection
18 to that.

19 HEARING OFFICER CELLI: And if need be,
20 what I would do then is receive the applicant's
21 testimony on visual and then if staff's witness
22 isn't here yet we'll take other evidence and
23 reopen visual for your purposes and proceed out.

24 MR. BABULA: Okay, actually our
25 biologist just got called to do, I think she's on

1 the phone with Ivanpah right now.

2 HEARING OFFICER CELLI: Okay.

3 MR. BABULA: So, --

4 MS. LUCKHARDT: Do you want us to start
5 with visual?

6 HEARING OFFICER CELLI: Do you need to
7 have your biologist here right now or is she
8 testifying on the phone right now?

9 MR. BABULA: I think so. What exactly
10 did you --

11 PRESIDING MEMBER DOUGLAS: She just got
12 called for cross-examination for some issue in
13 Ivanpah so she had to step out.

14 HEARING OFFICER CELLI: Well, staff,
15 what's your feeling? I'm ready to proceed, I'd
16 like to proceed on biology. Do you think you're
17 okay to proceed without your biologist sitting
18 here for the applicant's presentation?

19 MR. BABULA: I think she wanted to hear
20 the applicant's presentation. So what about soil
21 and water?

22 HEARING OFFICER CELLI: Does anyone have
23 a problem if we start with soil and water instead?

24 MS. LUCKHARDT: The only problem is then
25 we'll have to do visual before we get into

1 biology, because we'll run out of time.

2 HEARING OFFICER CELLI: Tell you what --

3 MR. BABULA: Do you want to do --

4 HEARING OFFICER CELLI: Visual isn't
5 even contested by CURE, so why don't you put on
6 your visual guy right now.

7 MR. BABULA: Yeah, let's do visual right
8 now.

9 MS. LUCKHARDT: Okay.

10 HEARING OFFICER CELLI: And then we
11 can --

12 MR. BABULA: When Mark gets here he
13 could do his part.

14 HEARING OFFICER CELLI: Okay. You know
15 what also, Jared, you have brass buttons.

16 MR. BABULA: And we do have a --

17 (Pause.)

18 HEARING OFFICER CELLI: Okay, so we're
19 going to proceed with visual resources, which is a
20 disputed topic area.

21 Before we proceed with visual I'm going
22 to ask the applicant if you're going to move any
23 documentary evidence in, that we do so. Or
24 actually, let's just take the testimony.

25 MS. LUCKHARDT: Yeah, it'll go with the

1 testimony.

2 HEARING OFFICER CELLI: Okay, very well.

3 MS. LUCKHARDT: Applicant calls Merlyn
4 Paulson to testify on visual resources. We would
5 also like to have Kenny Stein sworn at this time,
6 since Kenny was responsible for the environmental
7 analysis done on this project and may be needed to
8 call to testify at any point today.

9 HEARING OFFICER CELLI: Thank you.
10 Please rise and raise your right hand.
11 Whereupon,

12 MERLYN PAULSON and KENNETH STEIN
13 were called as witnesses herein, and after first
14 having been duly sworn, were examined and
15 testified as follows:

16 HEARING OFFICER CELLI: Please proceed
17 with your first witness.

18 MS. LUCKHARDT: Okay.

19 DIRECT EXAMINATION

20 BY MS. LUCKHARDT:

21 Q Mr. Paulson, are your qualifications
22 included in the record at exhibit 209?

23 MR. PAULSON: Yes.

24 MS. LUCKHARDT: And are you sponsoring
25 today exhibits numbered 19, AFC section 515; 119,

1 the preliminary PSA comments, section 2-G; 144,
2 the PSA comments on visual resources; 164, the
3 project design refinements section 2.1.10 on
4 visual resources; exhibit number 174, the project
5 design refinements section 4.1.7 on visual
6 resources; exhibit number 181, project design
7 refinements section 4.2.5 on visual resources;
8 exhibit number 290, the declaration of Merlyn
9 Paulson and exhibit number 324, which is the
10 rebuttal testimony of Merlyn Paulson, at this
11 time?

12 MR. PAULSON: Yes.

13 MS. LUCKHARDT: In addition, applicant
14 is requesting that the following exhibits be
15 entered by declaration. That would be exhibit
16 233, which is an email from BLM; exhibit 240,
17 which is the declaration of Brian Storm on visual;
18 exhibit 285, which is the declaration by Kenny
19 Stein; and exhibit 323, which is the declaration
20 of Jody Salamacha-Hollier, who took the
21 photographs. It explains how she took the
22 photographs.

23 I don't believe any of those issues are
24 issues of contention at this time where we need
25 the individuals present. So I believe we can

1 enter those by declaration.

2 HEARING OFFICER CELLI: Any objection,
3 CURE?

4 MS. GULESSERIAN: CURE has no
5 objections.

6 HEARING OFFICER CELLI: Staff, any
7 objection?

8 MR. BABULA: No objections.

9 HEARING OFFICER CELLI: Okay, let me
10 make sure I have this right. Exhibits for
11 identification marked 19, 119, 144, 164, 174, 181,
12 233, 240, 285, 290 and 323 are moved in by
13 applicant at this time. And will be received into
14 evidence. Did I get it right?

15 MS. LUCKHARDT: In addition to 119, the
16 preliminary PSA comments, and 324, the rebuttal
17 testimony of Merlyn Paulson.

18 HEARING OFFICER CELLI: And any
19 objection, CURE, to 119 and 324?

20 MS. GULESSERIAN: No objections.

21 HEARING OFFICER CELLI: Staff?

22 MR. BABULA: No objections.

23 HEARING OFFICER CELLI: Very well,
24 exhibits marked for identification as 119 and 324
25 are received into evidence.

1 MS. LUCKHARDT: Mr. Paulson, do you have
2 any corrections to your testimony at this time?

3 MR. PAULSON: No.

4 HEARING OFFICER CELLI: Mr. Paulson, I'm
5 going to ask you to slide your mic closer to you
6 so you can speak right into it, okay.

7 MS. LUCKHARDT: And, Mr. Paulson, where
8 your testimony includes opinion, is it your best
9 professional judgment?

10 MR. PAULSON: Yes, it is.

11 MS. LUCKHARDT: And where your testimony
12 includes facts, are they true and correct?

13 MR. PAULSON: Yes.

14 MS. LUCKHARDT: And can you please
15 briefly describe your qualifications in the area
16 of visual resources?

17 MR. PAULSON: Yes.

18 HEARING OFFICER CELLI: Before he does,
19 I'm just wondering if that evidence is already in
20 the declaration somewhere. And I wonder if the
21 parties will be willing to stipulate?

22 MS. LUCKHARDT: It is.

23 HEARING OFFICER CELLI: Visual actually.

24 MS. LUCKHARDT: It is already in the
25 there.

1 HEARING OFFICER CELLI: In which
2 exhibit?

3 MS. LUCKHARDT: It would be in exhibit
4 290.

5 HEARING OFFICER CELLI: So in light of
6 the fact that Mr. Paulson's qualifications are
7 contained completely in exhibit 290, does CURE
8 have any objection to this witness? Would you be
9 willing to stipulate to his expertise?

10 MS. GULESSERIAN: Yes.

11 HEARING OFFICER CELLI: And, staff,
12 would you be willing to so stipulate?

13 MR. BABULA: Yeah, that's fine. We'll
14 stipulate.

15 HEARING OFFICER CELLI: Thank you. So
16 with that, I would appreciate it if we can just
17 move into the heart of the matter.

18 MS. LUCKHARDT: Okay. Mr. Paulson, can
19 you please provide the Committee with an
20 understanding of the physical setting of the
21 project, the project impacts, and how you reached
22 your conclusion that Beacon will not cause a
23 significant adverse impact?

24 MR. PAULSON: I intend to show, to
25 demonstrate that the visual environment of KOPs,

1 or key observation points 2 and 6, and you see 6
2 right there and 2 right there.

3 Two is the Jawbone Canyon Visitors
4 Center. Six is a trail in the, on BLM lands.

5 HEARING OFFICER CELLI: And for the
6 record, you are pointing to a map which has been
7 marked as exhibit what?

8 MS. LUCKHARDT: Exhibit 324.

9 HEARING OFFICER CELLI: Thank you. So,
10 when you say there, if you wouldn't mind saying on
11 exhibit 324 that which is marked, you know,
12 Jawbone Canyon.

13 MR. PAULSON: And say that again now?

14 HEARING OFFICER CELLI: That's fine. I
15 just, when you state "there" in the record and
16 people are reading the transcript later, it
17 doesn't mean anything because they don't know what
18 "there" is.

19 MR. PAULSON: Okay.

20 HEARING OFFICER CELLI: So, now we know
21 that "there" is exhibit 324, which appears to be
22 what, a map?

23 MR. PAULSON: Exhibit 324 is an aerial
24 photograph with the project and key observation
25 points superimposed.

1 HEARING OFFICER CELLI: Thank you very
2 much.

3 MS. LUCKHARDT: And just for the record,
4 I guess I would clarify that these are PowerPoint
5 slides that are included in 324 that he will be
6 going through. And he can reference slide number
7 as a way to indicate which slide he's on.

8 HEARING OFFICER CELLI: Perfect. Thank
9 you very much. Please proceed.

10 MR. PAULSON: Okay. I intend to
11 demonstrate the visual environment of KOPs 2 and
12 6; and to show the extensive development, large-
13 scale development and geometric patterns on the
14 earth.

15 Next slide, please. This is a slide,
16 the slide is number 3, even though it isn't for
17 some reason on this slide now.

18 MR. STEIN: It's up there; in the lower
19 left.

20 MR. PAULSON: Oh, it's in black, I see,
21 I'm sorry. And this is from Pine Tree Canyon
22 Road, and it is one of the ways to get to KOP-6.
23 This is the transfer station that exists out there
24 now.

25 Next slide, please. This is obviously

1 the road and the Los Angeles Aqueduct Pipeline
2 that crosses all of the roads and trails leading
3 into BLM land.

4 Next slide, please. The pipeline,
5 again, the transmission line. And what's more
6 important is this is Chuckwalla Mountain, the
7 large mountain that is approximately two miles
8 west of KOP-6, which is a ways off the slide here
9 to the right.

10 Next slide, please. The road near the
11 trailhead has this view. First of all of the
12 transfer station in the foreground, the
13 transmission lines. And then the disturbed area
14 that you see is the project area, the project
15 site.

16 The band of green in the background is
17 the Honda Proving Center Test Track. The project
18 site is identifiable from the ground and from the
19 air because of its disturbance pattern and the
20 fact that it's essentially just sand out there.

21 Next slide, please. This is an
22 abandoned homestead foundation. A tree on the
23 left that casts a shadow just off the slide. And
24 it's representative of the character of the
25 trailhead.

1 Next slide, please. This is
2 representative of the very large amount of dumping
3 that's gone on on those BLM roads and trails. And
4 this is a very large tank that someone just sort
5 of stashed here rather than taking it to the
6 landfill.

7 Next slide, please.

8 HEARING OFFICER CELLI: Mr. Paulson, I'm
9 sorry, I may have missed this, but is there a name
10 to this trailhead?

11 MR. PAULSON: No, there isn't. None of
12 the trails are named in that area.

13 HEARING OFFICER CELLI: Thank you.

14 MR. PAULSON: More of the same. This is
15 accompanied -- things like this are accompanied by
16 hundreds and thousands of shell casings along the
17 trails.

18 Next slide, please. Same for this.
19 This is slide 10, and it shows, in this case, a
20 bedspring that someone thought would be easier to
21 put here than in the local dump.

22 Again, the project area. You see that
23 the project area is this rectangle, this geometric
24 pattern. Again, highly visible. It's a landmark
25 in the area from both the ground and the air.

1 Next slide, please. In this case the
2 slide 12, the Honda Proving Center Track and the
3 project area in the foreground. That corner that
4 you see will be a common identifying element in
5 the later slides. And you can see the graded and
6 drained land removed of vegetation in the project
7 area.

8 Next slide, please. There are a
9 significant number of sort of random offroad
10 vehicle trails that are not sanctioned by BLM.
11 And those exist in many places throughout the
12 foothills.

13 Next slide, please. Another example of
14 that on slide 14.

15 Next slide. Thank you. This is that
16 foundation, again, at the trailhead. And it is
17 opportunity for people to park at this particular
18 trailhead. You can see that it isn't just a
19 hiking trail, that it also includes access to
20 those multiple off-highway vehicles.

21 In this case, slide 16 shows -- this
22 slide is -- it's not quite dark enough in the room
23 to see well. The transfer station, a community in
24 the background, and then California -- thank you
25 -- and then California City is in the far

1 background here. The project site is just off to
2 the left. This is part of the experience on the
3 way to the project,

4 Next slide, please. Again, the project
5 area. You can see how different it is than the
6 surrounding desert, in the foreground and on the
7 right-hand side, the Honda Proving Track in the
8 background. And, again, you will see later in
9 KOP-6 that this is where the array goes in this
10 most disturbed area.

11 Next slide, please. This is part of the
12 visual environment between KOP-6 and KOP-2. There
13 are numerous instances of abandoned homesteads and
14 so on.

15 This is the Jawbone Canyon Store
16 obviously from just on the west edge of highway
17 14, very close to KOP-2.

18 Next slide, please. This is, slide 20
19 is the existing environment from KOP-2, the
20 Jawbone Canyon Visitors Center, BLM site. And
21 back here, if you sort of squint your eyes, is
22 that same corner and a ranch that's sort of behind
23 it, disturbed right and left.

24 Next slide, please. This is the AFC
25 photo of the existing environment from KOP-2. And

1 the transfer station is back here. That corner is
2 over on this side. And you can see in the
3 foreground there highway 14, the railroad. And on
4 the left-hand side is the corner of the Honda Test
5 Track.

6 Next slide, please. This is a
7 simulation of the project from the engineering
8 drawings from the project. And, again, it isn't
9 quite dark enough, but you see a little bit of a
10 series of roads right here. And then, of course,
11 the lighter area here. The power block is right
12 there.

13 And this is morning sunlight. The sun
14 has already passed by these arrays, as it would be
15 seen from KOP-2. And all of this is sort of
16 fleeting. It's ephemeral. The colors that you
17 see there are reflected from the sky. And, again,
18 the sun has passed by this area and eventually
19 it's going to pass by this area.

20 And this exact view is sort of a
21 fleeting moment in time because it's a slide,
22 because of the requirements of the AFC, this exact
23 view would maybe last for a half hour at the most.

24 Next slide, please. This is KOP-6. The
25 trail that comes up toward KOP-6 is on the side of

1 this ridge line, on the left-hand side of the
2 ridge line, slide 23. And you can see again the
3 project area, the project site.

4 There are existing ranch buildings here.

5 There are numerous irrigation equipment just kind
6 of abandoned out on the site, it looks like. And
7 then the desert around the outside. This is
8 identifiable as a geometric pattern, as well as
9 the Honda test track, both from the ground and
10 from the air. I've flown several times now from
11 Inyo-Kern to Los Angeles, and this is identifiable
12 uniquely.

13 Next slide, please. This is the project
14 superimposed in that rectangular pattern. It's
15 approximately 1200 acres. And by the way, the
16 test track is approximately 2500 acres. So two of
17 these projects would fit inside the test track.

18 Just off to the left of this is Cohen
19 Lake, and it is right now, because of the color of
20 the sky, the same color as the arrays would be.
21 The sun is now at our back and that's why we see
22 the blue. Up until the time that the sun is at
23 our back, the arrays would be tan in color, and
24 the same color as the desert around it. So it
25 would blend into this rectangular pattern around

1 it.

2 Again, this is the power block. The
3 color and texture of the project from this
4 distance is very similar to the colors of the
5 disturbed desert around it.

6 In terms of the overall look at all of
7 this, and I'll read this quickly for the record,
8 slide 25: Existing views in the general area
9 already have many geometric features and
10 industrial facilities, such as the highway,
11 railroad, storage buildings, transmission lines,
12 aqueduct and Honda Test Track.

13 Trails to nearby mountains are mostly
14 used by off-highway, offroad vehicles and very few
15 hikers. The FSA's analysis of existing conditions
16 include visual quality, viewer concern,
17 visibility, number of viewers and duration of
18 view. Except for visibility the remaining factors
19 are in the low range from KOP-2 and KOP-6. And
20 the low range of a possible range of low, moderate
21 and high.

22 The FSA's analysis of the project
23 involves visual contrast, dominance, view blockage
24 and visual change. All of these factors are in
25 the low range from KOP-2 and KOP-6 because of the

1 disturbance in the area.

2 In conclusion the Beacon Solar Energy
3 Project should not be considered to have a
4 significant impact to visual resources, based on
5 the criteria presented in the FSA.

6 Thank you.

7 MS. LUCKHARDT: And I have two quick
8 follow-up questions.

9 HEARING OFFICER CELLI: Before you do,
10 can I just ask that the lights go back up.

11 MS. LUCKHARDT: Two quick follow-up
12 questions. Is this project somewhat unique in
13 that the backs of the arrays will be painted sand
14 color?

15 MR. PAULSON: Yes, it is.

16 MS. LUCKHARDT: And did you take the
17 photos that are in the AFC, including the one from
18 the hiking trail?

19 MR. PAULSON: Yes, I did.

20 MS. LUCKHARDT: Thank you. I have no
21 further questions.

22 HEARING OFFICER CELLI: Thank you. This
23 was not a contested area by CURE, but, CURE, do
24 you have any cross-examination of this witness?

25 MS. GULESSERIAN: No, we do not.

1 HEARING OFFICER CELLI: Thank you.

2 Staff, cross?

3 MR. BABULA: I do have a few questions
4 here.

5 CROSS-EXAMINATION

6 BY MR. BABULA:

7 Q I'm not clear what the relevance is of
8 the garbage in your slides, because the whole
9 issue is from a distance, the contrast of the
10 field.

11 So the slides showing garbage, to me,
12 are a little misleading. Can you just explain
13 what the purpose is of the very close-up shots?
14 Because you can go to any pristine area and find a
15 can and take a picture of it.

16 HEARING OFFICER CELLI: I'm just going
17 to ask the attorneys, watch the compound
18 questions. That was about four questions.

19 MR. BABULA: Right. What's the point of
20 taking pictures of garbage?

21 MR. PAULSON: One is when one hikes in
22 the area, especially at that slow speed, one is
23 subject to extensive human interactions,
24 interventions with what is otherwise sometimes
25 portrayed as pristine desert. It simply isn't.

1 MR. BABULA: Okay. And my last
2 question. In your testimony you stated, while the
3 project, itself, would create a substantial visual
4 contrast for a portion of the day. And I take it
5 that was the half-hour slide? Isn't that the
6 problem, though? I mean you have a substantial
7 visual contrast for even if it's a short period.
8 Someone could be out there and it looks completely
9 different.

10 MR. PAULSON: Yes, those slides
11 represent the worst case --

12 MR. BABULA: Okay.

13 MR. PAULSON: -- regardless of how
14 little time.

15 MR. BABULA: Okay. So if you say that
16 it is a substantial visual contrast isn't that a
17 little contradictory to then conclude that there
18 is no impact?

19 MR. PAULSON: There are many projects
20 over the last 37 years of work that have a
21 substantial visual contrast, but aren't
22 necessarily significant. There's a difference
23 between contrast and significant.

24 Every indicator doesn't automatically
25 determine significance if it's in the moderate to

1 high category.

2 MR. BABULA: Okay.

3 MR. PAULSON: So there's a difference
4 between significant and high contrast.

5 MR. BABULA: Okay. Well, I don't have
6 any further questions.

7 HEARING OFFICER CELLI: Okay. Chairman
8 Douglas, did you have any questions?

9 PRESIDING MEMBER DOUGLAS: No.

10 HEARING OFFICER CELLI: I have a
11 question. I just wanted to make sure that I
12 understood.

13 Presumably all that trash and debris is
14 a temporary condition, it could be cleaned up if
15 anybody ever decided to do so.

16 Are you suggesting that it is that
17 condition that reduces this impact to less than
18 significant?

19 MR. PAULSON: Not just that. No, no.
20 It's on a scale of one-to-ten, I'll just throw out
21 a number, it might be a two or a three. It's part
22 of the environment.

23 What does reduce the impact to less than
24 significant are the large-scale, intensive
25 geometric patterns that exist out there. And

1 they're going to exist with or without the project
2 so then the project kind of blends in to those.

3 HEARING OFFICER CELLI: Thank you. I
4 just have another question if it's acceptable to
5 the parties. I just wanted to, it's been awhile
6 since I read the visual section. And I do recall
7 reading that it was from these two KOPs, what was
8 it 4 and 6?

9 MR. BABULA: Two and 6.

10 HEARING OFFICER CELLI: Two and 6, but
11 for 2 and 6 there would be no visual impacts. But
12 it was from these KOPs that staff determined that
13 there were unmitigable impacts. And those are
14 those grand views that you showed us up there.

15 What is it in the staff's evidence that
16 you differ with?

17 MR. PAULSON: Simply that a moderate-to-
18 high contrast automatically equates to significant
19 impact.

20 HEARING OFFICER CELLI: You feel that it
21 does not?

22 MR. PAULSON: In this case I feel that
23 it does not. And if it was out in pristine desert
24 I wouldn't feel that way. But we have these
25 geometric patterns there that predate the project.

1 And they're going to be there with or without the
2 project. And that, in my opinion, is cause for
3 saying it's not significant.

4 HEARING OFFICER CELLI: Thank you. Any
5 rehabilitation?

6 MS. LUCKHARDT: No.

7 HEARING OFFICER CELLI: Any recross,
8 CURE?

9 MS. GULESSERIAN: No.

10 HEARING OFFICER CELLI: Recross, staff?

11 MR. BABULA: No.

12 HEARING OFFICER CELLI: Since I asked
13 questions it gives you the opportunity to clean up
14 any mess I made.

15 MR. BABULA: Okay.

16 HEARING OFFICER CELLI: Applicant,
17 anything further?

18 MS. LUCKHARDT: We have nothing further.

19 HEARING OFFICER CELLI: I believe at
20 this time we've received all of your evidence with
21 regard to visual?

22 MS. LUCKHARDT: Can we double-check that
23 exhibit 105 was entered into the record. I
24 thought it was; I'd just like to confirm that.

25 HEARING OFFICER CELLI: What has now

1 been received is 19, 105, 119, 144, 164, 174, 181,
2 233, 240, 285, 290, 323 and 324.

3 MS. LUCKHARDT: Thank you.

4 HEARING OFFICER CELLI: Anything further
5 of this witness?

6 MS. LUCKHARDT: No.

7 HEARING OFFICER CELLI: Okay, very good.
8 Thank you, Mr. Paulson, for your testimony.

9 MR. PAULSON: Thank you.

10 HEARING OFFICER CELLI: We are going to
11 leave visual open then until we hear from
12 Mr. Hamblin. Is he here, Mark Hamblin?

13 MR. BABULA: I don't see him now. I'm
14 also seeing if Susan's here.

15 HEARING OFFICER CELLI: Did you have
16 another witness on visual?

17 MR. BABULA: No. I meant Susan Sanders
18 for bio.

19 HEARING OFFICER CELLI: Oh.

20 MR. BABULA: So maybe we can move to
21 soil and water.

22 HEARING OFFICER CELLI: Well, I really
23 wanted to see if we can get to bio. It's 11:20.
24 We've made good progress in that we've taken care
25 of cultural and part of visual.

1 How much time do you think Mr. Hamblin
2 is going to need?

3 MR. BABULA: Oh, five, ten minutes. We
4 don't have a slide presentation.

5 HEARING OFFICER CELLI: Chairman
6 Douglas, do you want to just proceed with soil and
7 water, then? Let's move on to soil and water.

8 Ladies and gentlemen, just so you're
9 aware, the applicant has the burden of proof, so
10 the applicant goes first. The applicant being
11 Nextera. This is their project, so it's incumbent
12 upon them to explain to us what their information
13 is, what their design is. So they go first.

14 Soil and water.

15 (Pause.)

16 HEARING OFFICER CELLI: Are we doing
17 anything special here with a panel or anything
18 like that?

19 MS. LUCKHARDT: We have, I believe that
20 we can enter Mr. Busa's testimony by declaration
21 so we could begin with Mike Flack. And then if
22 there are engineering questions, since Mr. McCloud
23 is still in the air, Jared Foster is available if
24 we need to do engineering questions on water at
25 this time.

1 HEARING OFFICER CELLI: Well, just for
2 the sake of clarity, I have soil and water split
3 into three sections and the amended applicant's
4 exhibit list.

5 I've got hydrology, I've got soils and
6 I've got water. Are all of these in dispute, soil
7 and water and hydrology?

8 MR. BABULA: I'm actually not clear why
9 you're having the applicant go first. I believe
10 CURE has the burden, because they have issues with
11 the use of recycled water, or not using recycled
12 water for the construction portion of this. And
13 so they want additional information.

14 And so I think under 1748 it's their
15 burden.

16 HEARING OFFICER CELLI: It would be if
17 we have established that there's no controversy
18 between staff and applicant with regard to soil.

19 MR. BABULA: There isn't any.

20 MS. LUCKHARDT: There is no conflict.

21 HEARING OFFICER CELLI: Soil, water or
22 hydrology?

23 MR. BABULA: No.

24 MS. LUCKHARDT: No.

25 MR. BABULA: We've resolved all issues

1 with the applicant on soil and water.

2 HEARING OFFICER CELLI: Very good.

3 Ms. Gulesserian, do you have any objection to, I'm
4 interested in seeing what exhibits I can receive
5 into evidence now that are not controverted of the
6 soils, of the hydrology of the water evidence that
7 applicant's putting in at this time.

8 MS. LUCKHARDT: I would assume that we
9 could enter in the, at least the exhibits on
10 hydrology and hydraulics. And we may have a
11 separate soil section, as well.

12 HEARING OFFICER CELLI: Does that ring
13 true for you, Ms. Gulesserian.

14 MS. GULESSERIAN: Yes. Excuse me. CURE
15 has no objection to entering those documents into
16 the record.

17 HEARING OFFICER CELLI: When you say,
18 those documents, you're talking about hydrology?

19 MS. GULESSERIAN: Soil and water and
20 hydrology.

21 HEARING OFFICER CELLI: Okay, so then
22 what I'm going to do at this time is first go to
23 hydrology and hydraulics. CURE, there's no
24 objection to the receipt of exhibits 63, 75, 82,
25 150, 152, 156, 194, 210, 217, 218, 237, 257, 273,

1 318 and 321.

2 Is there any objection from staff?

3 MR. BABULA: No objection as to those.

4 HEARING OFFICER CELLI: So, with that is
5 there a motion by applicant?

6 MS. LUCKHARDT: Applicant moves exhibit
7 63, the responses to CEC data requests 17 and 43
8 through 44; exhibit 75, the supplemental responses
9 to CEC data requests 44 and 45 with attachments
10 DR-44 and DR-45; exhibit 82, responses to CEC data
11 requests 93 through 95.

12 Exhibit 150, materials from the Clumar
13 meeting; exhibit 152, the rerouted wash
14 electronics support files; exhibit 156, project
15 design refinements section 2.1.1; exhibit 194,
16 project design refinements attachment 1-A.

17 Exhibit 210, email from Jen Guigliano
18 with the electronic support file; exhibit 217, the
19 response to the rerouted wash information request;
20 exhibit 218, the email from Jen Guigliano on the
21 flow 2D models.

22 Exhibit 237, the declaration of Bob
23 Anders on hydrology and hydraulics; exhibit 257,
24 the declaration of Gerard DiDeo (phonetic)_ on
25 hydrology and hydraulics; exhibit 273, the

1 declaration of Jennifer Guigliano on hydrology and
2 hydraulics; exhibit 318, the declaration of Sirkan
3 Momatoglu (phonetic)- - hopefully I haven't killed
4 that one -- on hydrology and hydraulics. And
5 exhibit 321, the 60 percent hydrology and
6 hydraulic analysis of the rerouted wash.

7 HEARING OFFICER CELLI: Thank you. And
8 in the absence of objections from any parties,
9 exhibits marked for identification 63, 75, 82,
10 150, 152, 156, 194, 210, 217, 218, 237, 257, 273,
11 318 and 321 are received into evidence.

12 Next we'll go to the soil section.

13 MS. LUCKHARDT: In the area of soils the
14 applicant moves exhibit number 16, AFC section 5-
15 12; exhibit 49, AFC appendix L; exhibit 66,
16 responses to CEC data requests 45 through 49 and
17 attachment DR-47; exhibit 238, declaration of Bob
18 Anders on soils; exhibit 251, declaration of Duane
19 McCloud on soils; and exhibit 294, the declaration
20 of Mike Flack on soils.

21 HEARING OFFICER CELLI: Any objection to
22 those exhibits from CURE?

23 MS. GULESSERIAN: No objection.

24 HEARING OFFICER CELLI: Any objection
25 from staff?

1 MR. BABULA: No objection.

2 HEARING OFFICER CELLI: Thank you. With
3 that, exhibits marked for identification as 16,
4 49, 66, 238, 251 and 294 will be received into
5 evidence.

6 And next we go on to water, page 11.

7 MS. LUCKHARDT: Okay, applicant, would
8 you like me to move our exhibits at this time on
9 water?

10 HEARING OFFICER CELLI: Please.

11 MS. LUCKHARDT: Exhibit 21, AFC section
12 5-17; exhibit 41, AFC appendix J; exhibit 42, AFC
13 appendix J-3-D; exhibit 69, responses to CEC data
14 requests 58 through 70; exhibit 70, responses to
15 CEC data requests attachment DR-63; exhibit 83,
16 responses to CEC data requests 96 through 127;
17 exhibit with the accompanying figures and tables.

18 Exhibit 84, response to data request 113
19 and attachment DR-113, the mod flow files; exhibit
20 86, supplemental responses to CEC data requests
21 101 through 103, 106 through 109, 112, 114 through
22 115, 117 through 123 with the attached tables and
23 figures.

24 Exhibit 94, supplemental data response,
25 workshop responses to CEC data requests 96, 101,

1 112, 114, 118 and 121 with attachments; exhibit
2 102, an email responding to CEC request regarding
3 high TDS water dated 1/16/09.

4 Exhibit 106, a summary of conference
5 call with Lahontan; exhibit 108, a response to the
6 Regional Water Quality Control Board comments on
7 the draft report of waste discharge application.

8 Exhibit 109, an email dated 2/23/09 with
9 a response to Eric Solorio regarding the sources
10 of groundwater data with an updated J-4 database.

11 Exhibit 120, the preliminary PSA comments,
12 section 3A; exhibit 140, the PSA comments on soil
13 and water.

14 Exhibit 141, the PSA comments, the
15 attachment soil and water-1; exhibit 142, the PSA
16 comments with attachment soil and water-2; exhibit
17 188, the project design refinements, figure 1,
18 attachment 202 project design refinements,
19 attachment 5.

20 Exhibit 203, project design refinements
21 attachment 6; exhibit 216, response to request for
22 predictive sensitivity groundwater analysis;
23 exhibit 225, it's an email dated 9/11/09 regarding
24 updated construction water impacts.

25 Exhibit 226, the LADWP's draft initial

1 study proposed negative declaration on the SAMDA
2 Water Exploration Fremont Valley Ranch Water
3 Management Project; exhibit 227, the Stetson
4 groundwater study; exhibit 231, the DWR well data.

5 Exhibit 243, the declaration of Dan
6 Sampson on water; exhibit 274, the declaration of
7 Jen Guigliano on water; exhibit 295, the
8 declaration of Michael Flack, this is exhibit 1 on
9 water or declaration 1 for Mike Flack. Exhibit
10 296 is the second declaration from Mike Flack.

11 Exhibit 315, the declaration of Scott
12 Stern on water; exhibit 335, the rebuttal
13 testimony of Michael Flack on water resources;
14 exhibit 336, the rebuttal testimony of Scott Busa
15 on water resources.

16 And exhibit 337 is the revised and
17 recommended condition of certification soil and
18 water-1, and appendix I that were agreed to
19 between the parties last week. Copies were sent
20 out via email. And I believe we also have copies
21 here today if anyone does not have them.

22 HEARING OFFICER CELLI: Any objection to
23 those exhibits, CURE?

24 MS. GULESSERIAN: No objection.

25 HEARING OFFICER CELLI: Any objection,

1 staff?

2 MR. BABULA: No objection.

3 HEARING OFFICER CELLI: Thank you.

4 Exhibits marked for identification as 21, 41, 42
5 to 69, 70, 83, 84, 86, 94, 102, 106, 108, 109,
6 120, 140, 141, 142, 188, 202, 203, 216, 225, 226,
7 227, 231, 243, 274, 295, 296, 315, 335, 336 and
8 337 are received into evidence at this time.

9 Applicant, call your first witness.

10 MS. LUCKHARDT: The only witness we
11 believe we need to present today in response to
12 the concerns expressed by CURE is Mr. Flack.

13 HEARING OFFICER CELLI: Actually, CURE,
14 never mind, we have received your evidence. CURE,
15 the burden is on you at this time because you're
16 challenging its admission. So if you wouldn't
17 mind calling your first witness and having him or
18 her be sworn.

19 MS. GULESSERIAN: Sure. In the interest
20 of moving things along I could. I don't think
21 that there is a dispute regarding our exhibits
22 being entered into the record. Could we do that
23 ahead of time?

24 HEARING OFFICER CELLI: Which numbers
25 are those?

1 MS. GULESSERIAN: That is --

2 HEARING OFFICER CELLI: I have 600.

3 MS. GULESSERIAN: CURE would move to
4 enter into the record 616, testimony of, okay.

5 HEARING OFFICER CELLI: Let's go back.

6 MS. GULESSERIAN: Sure.

7 HEARING OFFICER CELLI: Soil, 612, is it
8 appropriate to enter that at this time? Because
9 we entered applicant's soil already.

10 MS. GULESSERIAN: Right, we could do
11 that now and --

12 HEARING OFFICER CELLI: So, let's take
13 it from soil, and then take your soil and water.
14 Before we do, let me just ask this. Applicant,
15 you reviewed all of CURE's exhibits, their
16 seconded amended exhibit list. Do you have any
17 objections to any particular exhibits coming in at
18 all?

19 MS. LUCKHARDT: We have no objections to
20 CURE's second amended exhibit list. We do have
21 objections to CURE's third amended exhibit list.
22 We have objections to exhibit number 638 and 639,
23 I believe, are the two that deal with soil and
24 water.

25 HEARING OFFICER CELLI: I have only

1 CURE's second amended list. And before we move
2 into any new exhibits, are there any objections
3 from the staff as to any of the exhibits listed by
4 CURE in their second amended exhibit list?

5 MR. BABULA: The second amended one, --

6 HEARING OFFICER CELLI: And that would
7 include 600 through 631.

8 MR. BABULA: Okay. If it just goes to
9 631, that was what they had already presented at
10 the --

11 HEARING OFFICER CELLI: At the
12 prehearing conference.

13 MR. BABULA: Yeah, that's fine. We
14 don't object to those.

15 HEARING OFFICER CELLI: With that, then,
16 I think in the interest of time what I might just
17 do is to have CURE move those exhibits in, and
18 then we'll talk about the subsequent ones, which I
19 don't have.

20 MS. LUCKHARDT: Are you moving in
21 hazardous materials and biology at this time, as
22 well, or simply water?

23 HEARING OFFICER CELLI: I'm thinking we
24 might as well enter all of the exhibits now, and
25 this way we're not wondering later whether we

1 admitted this or that exhibit.

2 I mean if the parties don't want us to
3 do that, then I can piecemeal it.

4 MS. LUCKHARDT: That's fine. You're
5 going through to 631?

6 HEARING OFFICER CELLI: Yes.

7 MS. LUCKHARDT: We have no objection
8 through 631.

9 MS. GULESSERIAN: CURE's second amended
10 exhibit list went through 637.

11 HEARING OFFICER CELLI: I'm on page 5.
12 Now this is, oh, I see, 636 and 637 on page 4.

13 MS. LUCKHARDT: We object to the
14 admission of 637, the confidential appendix C.

15 MS. GULESSERIAN: And we haven't moved
16 to enter that into the record at this time.

17 HEARING OFFICER CELLI: So, is there,
18 from applicant, any objection to receipt of
19 evidence through 636?

20 MS. LUCKHARDT: No.

21 HEARING OFFICER CELLI: Is there any
22 objection from staff?

23 MR. BABULA: No.

24 HEARING OFFICER CELLI: Okay, what I
25 think we should do in the interest of time, then,

1 is if you would please, as the applicant just did,
2 identify and give us the exhibit number, what it
3 is. Let's just get them all in and then you got
4 all your documents.

5 MS. GULESSERIAN: Okay. I'll note that
6 we have additional exhibits, but we can start with
7 these ones and then go on.

8 HEARING OFFICER CELLI: So we're taking
9 it through 636, please.

10 MS. GULESSERIAN: Thank you. CURE moves
11 to enter into the record exhibit 600, testimony of
12 Scott Cashen on biological resources; 601,
13 declaration of Scott Cashen; 602, exhibit 1,
14 résumé of Scott Cashen; 603, exhibit 2, California
15 Department of Fish and Game Mojave Ground Squirrel
16 Survey Guidelines.

17 Exhibit 604, exhibit 3, Gustafson, Jr.,
18 State of California, Department of Fish and Game;
19 exhibit 605, exhibit 4, conference call agenda for
20 May 21, 2008 BSEPCEC proceeding; exhibit 606,
21 exhibit 5, AFC bio tech report, figure 11.

22 Exhibit 607, exhibit 6, the California
23 Burrowing Owl Consortium, burrowing owl survey
24 protocol and mitigation guidelines; exhibit 608,
25 exhibit 7, State of California, Department of Fish

1 and Game, Staff report on burrowing owl
2 mitigation.

3 Exhibit 609, exhibit 8, AFC figure BR-
4 78-1; exhibit 610, exhibit 9, applicant's response
5 to select CURE's comments at CEC's request;
6 exhibit 611, exhibit 10, memorandum from
7 California Department of Fish and Game to
8 California Energy Commission, subject Beacon Solar
9 Energy Project, application for certification.

10 Exhibit 612, testimony of Matt Hagemann
11 on soil resources and waste management; exhibit
12 613, declaration of Matt Hagemann; exhibit 614,
13 attachment 1, résumé of Matt Hagemann; exhibit
14 615, attachment 2, spill reports sites 3 through
15 7.

16 Exhibit 616, testimony of David Marcus
17 on transmission engineering and water resources
18 and alternatives. Exhibit 617, declaration of
19 David Marcus; exhibit 618, exhibit 1, résumé of
20 David Marcus; exhibit 619, exhibit 2, LADWP Barren
21 Ridge Renewable Transmission Project.

22 Exhibit 620, exhibit 3, projection
23 engineering statement of qualifications; exhibit
24 621, exhibit 4, NRG SCE filing, Exhibit 622,
25 exhibit 5, siting cases; exhibit 623, exhibit 6,

1 Worley-Parsons, FPLe, Beacon Solar Energy Project
2 dry cooling evaluation; exhibit 624, exhibit 7,
3 CPUC 33 percent renewable portfolio standard
4 implementation analysis, preliminary results.

5 Exhibit 625, rebuttal testimony of Matt
6 Hagemann on hazardous materials and waste
7 management; exhibit 626, declaration of Matt
8 Hagemann; exhibit 627, attachment 1, hazardous
9 materials business plan February 23, 2009, LUZ
10 Solar Partners 3 through 7.

11 Exhibit 628, attachment 2, material
12 safety data sheet for Thermal VP-1, May 16, 2009;
13 exhibit 629, attachment 3, letter from FPL Energy
14 to RWQCB re: SEGS, 3 HTF spill October 21, 2005.

15 Exhibit 630, attachment 4, notice of
16 violation issued by San Bernardino County Fire
17 Department to FPL Energy; exhibit 631, attachment
18 5, recycled materials reports FPL Energy to San
19 Bernardino County Fire Department 2004 to 2005 and
20 2006 to 2007.

21 Exhibit 632, rebuttal testimony of
22 Michael A. Bias on biological resources; exhibit
23 633, declaration of Michael A. Bias; exhibit 634,
24 adopted declaration; exhibit 635, exhibit 1,
25 résumé of Michael A. Bias; exhibit 636, BESP FSA

1 soil and water resources and alternatives.

2 HEARING OFFICER CELLI: So at this time
3 exhibits, there being no objection from any party,
4 intervenor CURE's exhibits 600 through 636 are
5 admitted.

6 Now, did you intend to withdraw 637
7 today and not admit it?

8 MS. GULESSERIAN: I'm not prepared to
9 withdraw it at this time.

10 HEARING OFFICER CELLI: Maybe we'll hold
11 off on that. Are there any other exhibits beyond
12 637 that I'm not aware of at this time?

13 MS. GULESSERIAN: Yes, there are. These
14 exhibits were provided to the parties last week
15 and served on the docket list, service list. I'm
16 trying to, shall I go through all of them, or
17 maybe save the biological resources for those --

18 HEARING OFFICER CELLI: How many
19 exhibits are we talking about?

20 MS. GULESSERIAN: We're talking about
21 exhibit 638, Office of Governor for the State of
22 California, 2009 comprehensive water package,
23 special session policy bills and bond, and summary
24 and a declaration.

25 Exhibit 39 (sic).

1 MR. BABULA: It's like 20.

2 HEARING OFFICER CELLI: Pardon me?

3 MR. BABULA: Around 20 extra exhibits.

4 MS. GULESSERIAN: Yes.

5 MS. LUCKHARDT: When printed out it
6 looks like this.

7 HEARING OFFICER CELLI: And this is
8 apparently after the prehearing conference?

9 MS. GULESSERIAN: That's correct. These
10 were documents relied upon; they're cited in
11 testimony that's already been submitted and there
12 shouldn't be any surprises.

13 These 638 and 639, which have to do with
14 water resources, are exhibits that you could take
15 judicial notice of. They're State of California
16 website pages summarizing water issues in the
17 State of California, which is relevant to the
18 Commission's decision on water conservation
19 consistency with LORS.

20 MS. LUCKHARDT: We would object to
21 those. If she would like to cite the actual law,
22 she can do that. We don't need a summary from the
23 Governor's website that is a summary of the
24 adopted water settlement on the Bay Delta.

25 So, we --

1 HEARING OFFICER CELLI: It does.
2 Anything on staff? Before I get to that I just
3 want to say it does seem needlessly cumulative,
4 and I'll tell you why.

5 We have the law. If there's a
6 particular slant, I guess, on that law from the
7 Governor's Office, I'm not so sure that that is
8 anything that we could take judicial count,
9 official notice of, per se, other than its
10 existence.

11 MS. GULESSERIAN: We would like to have
12 these into the record. They are the Governor's
13 intent on why he has signed a bill that is
14 authorizing a bond to address water issues in the
15 State of California.

16 We can certainly cite to the
17 legislation, but the reasons for signing that
18 legislation are set forth just on the State of
19 California's website, the Governor's website.

20 HEARING OFFICER CELLI: You know, part
21 of the reason we have a prehearing conference, in
22 fact the only reason we have a prehearing
23 conference is so that we don't have this
24 circumstance pop up where new exhibits come after
25 the prehearing conference that the parties are

1 objecting to.

2 I mean if there were going to be an
3 objection to these exhibits, we could have haggled
4 it out at the prehearing conference. That's the
5 whole reason we have a prehearing conference. To
6 find out what you want to bring in; find out what
7 their objections are, and move on.

8 But this comes a little late in the
9 game.

10 MS. GULESSERIAN: These exhibits were
11 served last week.

12 HEARING OFFICER CELLI: But after the
13 prehearing conference, do I have that right?

14 MS. LUCKHARDT: I would like to clarify.
15 We received an email with an exhibit list on
16 Thursday sometime between 4:00 and 5:00.

17 HEARING OFFICER CELLI: Hold that
18 thought. Marlee, this is clicking, the tape
19 recorder sitting right here is clicking.

20 Folks, just so you know, everything
21 that's being said is being recorded. And we will
22 have a transcript out. Just want to make sure
23 that we don't have holes in the transcript, so.

24 THE REPORTER: Normal backup, thank you.

25 HEARING OFFICER CELLI: Before we go on,

1 so, Ms. Luckhardt, go ahead.

2 MS. LUCKHARDT: We received an exhibit
3 list, an email with an exhibit list, on Thursday,
4 sometime between 4:00 and 5:00, listing these
5 exhibits. We did not actually receive the
6 exhibits. These were hard copies sent to us until
7 Friday.

8 And when we received them we then had to
9 go through and proceed to scan them to get them to
10 our witnesses in time to allow anyone to even have
11 an opportunity to see what they are, let alone
12 digest what's said inside them and what they
13 relate to.

14 So these are late, and extremely late,
15 given that we've had not even one complete working
16 day before today to review these exhibits.

17 And it wasn't just one small thing. I
18 mean I'm looking at three inches of paper. And,
19 you know, especially when you're going to bring up
20 things like the Governor's website, as opposed to
21 just citing directly to the law. There are
22 political overtones that are a part of any
23 political office.

24 And we object, and would object to
25 taking official notice of those documents as being

1 the truth of the matter asserted.

2 So, other than the fact that they exist,
3 and that's what's on the Governor's website, we
4 would object to what is said inside those.
5 Because they are essentially an interpretation of
6 the law that was passed.

7 MS. GULESSERIAN: These exhibits were
8 served last week, and when the, when it was sent
9 out by email both of these two documents were
10 identified with a hyperlink, as was, you know,
11 staff's exhibits that they identified with
12 hyperlinks, yet didn't provide in hard copy.

13 So, --

14 HEARING OFFICER CELLI: What date did
15 that email go out? Or what day of last week?
16 Because we had our prehearing conference on Monday
17 of last week, correct?

18 MS. GULESSERIAN: Yes. Correct.

19 MS. LUCKHARDT: Yes.

20 HEARING OFFICER CELLI: So what day did
21 the email go out?

22 MS. GULESSERIAN: I apologize, I'm going
23 to try and --

24 HEARING OFFICER CELLI: Last week was,
25 the 15th was Monday.

1 MS. GULESSERIAN: One moment, please.

2 HEARING OFFICER CELLI: And do you have
3 a copy of that email, Ms. Luckhardt? Do you have
4 the date and time on that email?

5 MS. LUCKHARDT: I would have to look it
6 up.

7 HEARING OFFICER CELLI: That's okay, Ms.
8 Gulesserian --

9 MS. GULESSERIAN: March 18th.

10 HEARING OFFICER CELLI: Well, March 18th
11 the email went out with, do I have it right, 20
12 additional exhibits? Where you left off at 637,
13 including that confidential --

14 MS. GULESSERIAN: Nineteen.

15 HEARING OFFICER CELLI: So, 19 exhibits
16 on the 18th. And when did --

17 MS. GULESSERIAN: And thereafter we sent
18 two more, so there's 21, in a separate document.
19 And a separate email to the service list.

20 HEARING OFFICER CELLI: And were you
21 aware of the existence of these exhibits on the
22 15th at our prehearing conference?

23 MS. GULESSERIAN: I was not aware of
24 them.

25 HEARING OFFICER CELLI: And how was

1 their existence brought to your attention
2 subsequent?

3 MS. GULESSERIAN: In preparing testimony
4 my witnesses identified documents that they relied
5 upon in preparing their testimony that would be
6 useful for the Commissioners to be able to verify
7 the truth of the matters stated in their
8 testimony.

9 HEARING OFFICER CELLI: I'm going to
10 first hear from staff. And then I'm going to make
11 a ruling and move on. Staff.

12 MR. BABULA: Yeah, I actually never
13 looked at, I didn't see these documents until I
14 got here today. I received the emails on the 18th
15 at 4:44. And then it just --

16 HEARING OFFICER CELLI: What day of the
17 week was the 18th?

18 MR. BABULA: Thursday. And then -- but
19 there was no documents attached. And then Friday
20 was problematic because of the furlough. So I was
21 working from home, but I never received any hard
22 copies of anything. And my staff hasn't seen
23 these exhibits whatsoever.

24 And I'd have to agree with the applicant
25 on their objections, that the Governor's website,

1 it exists but it may or may not, I don't know what
2 the content and I haven't looked at that
3 particular document, so I'm not even sure what
4 they're trying to pull from that.

5 HEARING OFFICER CELLI: So, although you
6 agree with the applicant's objection, does staff
7 object to the --

8 MR. BABULA: Yeah, I would object to the
9 admission of all those documents. They're late
10 and we haven't had a chance to review them. They
11 don't even seem particularly relevant.

12 HEARING OFFICER CELLI: What I would say
13 is this, Ms. Gulesserian. As we are aware, your
14 experts may rely on hearsay, and they may testify
15 as to hearsay. But we don't necessarily need the
16 hearsay documents supporting their testimony to
17 come in.

18 I find that there is a, the parties are
19 prejudiced by this late offering of 19 exhibits.
20 I will not admit, will not receive exhibits now.
21 Those are exhibits 638 through what is the last
22 number?

23 MS. GULESSERIAN: Well, 638 and 639 are
24 the ones that we just discussed counsels'
25 objections to. And those are the two State of

1 California websites.

2 HEARING OFFICER CELLI: I'll tell you,
3 the basis of the objection to be clear for the
4 record, is that this is late, after filed. I'm
5 sure you didn't mean to ambush anyone. I'm sure
6 there were efforts to have a complete record and
7 to support your evidence, that you wanted to put
8 these last-minute things in.

9 But there's a point at which we have to
10 say no. And that point is the prehearing
11 conference. When the parties come into the
12 prehearing conference, that's the state of the
13 evidence. And unless there was some compelling
14 evidence later-found information based upon
15 somebody perhaps hiding or playing hide-the-ball,
16 or something like that, that's different.

17 But this is an awful lot that I'm
18 looking at. We will take official notice that
19 that's a good three inches of paper. And that's
20 an awful lot of evidence to hit the other parties
21 with after the prehearing conference.

22 And so with that, I would not admit
23 exhibits 638. What was the last number?

24 MS. GULESSERIAN: May I get some
25 clarification before you make your ruling?

1 HEARING OFFICER CELLI: Please.

2 MS. GULESSERIAN: I'd like to hear the
3 objection, I mean if they're all being based on it
4 late is my understanding, but the record is open
5 until the close of the evidentiary period. And
6 these documents were provided next week (sic).

7 I also understand that people can submit
8 documentary evidence even today before the
9 evidentiary record closes.

10 HEARING OFFICER CELLI: Certainly, but
11 that's in the case of, let's say, rebuttal
12 testimony or really it's in cross-examination.
13 There's no limitation on what documents the
14 parties want to use to cross-examine.

15 But as the proponent of evidence of
16 direct testimony, which is what you're putting in,
17 that's final. That's known and that came in at
18 the prehearing conference.

19 So, I'm sorry if there were additional
20 information that you'd like to get in, I think
21 that we have an adequate record, as it is. I've
22 read the testimony and the rebuttal testimony.

23 So, --

24 MS. GULESSERIAN: There are a few
25 exhibits that we would be, we could discuss in

1 cross-examination of other witnesses. We're
2 talking about them in a lump sum, but some of them
3 are related to other issues that we're not talking
4 about right now.

5 For example, transmission system
6 engineering. We could, during cross, enter those
7 exhibits into the record if that witness --

8 HEARING OFFICER CELLI: Certainly, if
9 that witness is aware of that document, you cross
10 him on the document, certainly you can make that
11 motion then.

12 But at this time, the Committee is
13 ruling that exhibits 630, so the additional new
14 exhibits after the prehearing conference would
15 have been marked for identification as 638 through
16 what number?

17 MS. GULESSERIAN: Through 658.

18 HEARING OFFICER CELLI: -- 658. Very
19 well. Exhibits 638 and 658, the objection is
20 sustained. They're late-filed and therefore the
21 Committee finds that those exhibits will not be
22 included into the record, without prejudice to
23 their use, perhaps, on cross-examination for
24 impeachment, if necessary. And only as relevant.

25 So, with that, let's move on.

1 And, please, let's have your first
2 witness, who has not been sworn yet I don't
3 believe. Or has he?
4 Whereupon,

5 DAVID MARCUS
6 was called as a witness herein, and after first
7 having been duly sworn, was examined and testified
8 as follows:

9 HEARING OFFICER CELLI: Thank you.
10 Please state your name and spell it for the
11 record.

12 MR. MARCUS: My name is David Marcus,
13 M-a-r-c-u-s.

14 HEARING OFFICER CELLI: Thank you,
15 Mr. Marcus. You may proceed, Ms. Gulesserian.

16 DIRECT EXAMINATION
17 BY MS. GULESSERIAN:

18 Q Mr. Marcus, whose testimony are you
19 sponsoring today?

20 A I'm sponsoring my testimony on behalf of
21 CURE on transmission engineering and water
22 resources and alternatives of the Beacon Solar
23 Project, dated November 12, 2009.

24 MS. GULESSERIAN: And let the record
25 note that those are marked as exhibits 616 through

1 624.

2 HEARING OFFICER CELLI: Thank you. The
3 record will so reflect.

4 BY MS. GULESSERIAN:

5 Q Are there any changes to your sworn
6 testimony, Mr. Marcus?

7 A Yes, there are. In the portion of my
8 testimony dealing with water use, in footnote 33,
9 there is a preliminary phrase that ends in the
10 word "equals" followed by a comma. Between the
11 "equals" and the comma, it should also say "593
12 acre feet."

13 I also have one correction to the
14 portion of exhibit 616, which deals with
15 transmission and system engineering. I don't know
16 if I should make that correction now or wait on
17 that.

18 HEARING OFFICER CELLI: You might as
19 well go ahead. That last change to footnote 33
20 was an exhibit, which exhibit?

21 THE WITNESS: 616.

22 HEARING OFFICER CELLI: That was exhibit
23 616? I'm talking about the footnote to insert 593
24 acre feet.

25 MS. GULESSERIAN: Oh, excuse me, that is

1 the direct, exhibit 616.

2 HEARING OFFICER CELLI: 616 was dealing
3 with water, correct?

4 THE WITNESS: 616 deals with both water
5 and transmission engineering.

6 HEARING OFFICER CELLI: Okay, so 616
7 does have, okay, that's my confusion. I'm sorry,
8 go ahead.

9 THE WITNESS: So I had one correction to
10 the portion of 616 dealing with water. That was
11 footnote 33. And an earlier portion of exhibit
12 616 in the last paragraph of the section on
13 transmission engineering.

14 HEARING OFFICER CELLI: Is there a page
15 number?

16 THE WITNESS: It's page 3 in my copy.
17 I'm not sure, it's the end of section Roman II.

18 The paragraph, the second sentence
19 starts, "Given the uncertainty regarding the
20 deliverability of the full Beacon output" and then
21 goes on to say, "condition TSE-5 should be revised
22 to clarify that a signed interconnection agreement
23 as a necessary precondition to the start of
24 construction."

25 For clarity it should say, "to the start

1 of power plant construction." So adding the one
2 word power plant.

3 BY MS. GULESSERIAN:

4 Q Do you have any other changes to your
5 testimony?

6 A No, I do not.

7 Q Are the opinions in your testimony your
8 own?

9 A Yes, they are.

10 Q Are they based on your professional
11 judgment?

12 A Yes, they are.

13 Q And are they based on your facts?

14 A Yes, they are.

15 Q Can you please summarize your testimony
16 and the basis for your conclusions.

17 HEARING OFFICER CELLI: Before you do I
18 just want to make clear that the parties stipulate
19 to this witness' expertise as it relates to soil
20 and water. Any objection, applicant, that he's an
21 expert on water and soil?

22 MS. LUCKHARDT: Well, I don't object to
23 his qualifications as an expert on different water
24 systems for cooling for construction. I would
25 object if he were to testify in the area of water,

1 groundwater, water policy or related subject
2 areas. If it is related to water use and the
3 specific confines of his testimony, I do not have
4 an objection of his previously written testimony.

5 HEARING OFFICER CELLI: We have his
6 résumé on file as exhibit what, Ms. Gulesserian?

7 MS. GULESSERIAN: That would be exhibit
8 618.

9 HEARING OFFICER CELLI: 618. And is
10 there any objection to this expert testifying as
11 an expert, staff?

12 MR. BABULA: No objections.

13 HEARING OFFICER CELLI: Thank you. The
14 reason I'm doing this is so that we don't need to
15 get into your qualifications. We have that in the
16 record, so let's just get to the testimony,
17 please. You qualify as an expert.

18 THE WITNESS: Thank you. Was the
19 question regarding the portion of my testimony
20 about water use or are we doing the whole of my
21 testimony now?

22 HEARING OFFICER CELLI: At this time
23 we're talking about water.

24 BY MS. GULESSERIAN:

25 Q Can you please just summarize your

1 finding, your testimony on construction water use.

2 A My testimony shows that based on data in
3 the FSA there are inconsistencies in the FSA
4 regarding the amount of water required for
5 preconstruction use.

6 It shows that if the proposed reclaimed
7 water pipeline, specifically the RCSD pipeline,
8 but the conclusion would apply to California City,
9 as well, if the reclaimed water pipeline were
10 built prior to construction start on the project,
11 then reclaimed water could be used in lieu of
12 groundwater during construction, as well as during
13 operation. And it then quantifies how much of the
14 planned preconstruction water use could be met
15 with reclaimed water rather than groundwater.

16 It then has some additional sections
17 dealing with the economics of the proposals that
18 were identified in the FSA for use of reclaimed
19 water and use of dry cooling respectively.

20 MS. GULESSERIAN: Thank you.

21 HEARING OFFICER CELLI: Anything
22 further?

23 MS. GULESSERIAN: No, thank you very
24 much.

25 HEARING OFFICER CELLI: Staff, cross?

1 MR. BABULA: Well, I'm going to object
2 that they even shifted the burden. I don't see
3 anything in there about, in his testimony, either
4 what was submitted or what he just said, that
5 deals with the feasibility of a construction
6 schedule that would require the acquisition of the
7 recycled water first. And completely finish that
8 part, and then get on to construction of the
9 project.

10 HEARING OFFICER CELLI: I recall reading
11 the testimony that supported the use of water,
12 recycled water during construction. I'm not sure
13 that he talked about any timeline, per se.

14 MR. BABULA: Right. Well, all he said
15 is that well, you should use it for construction.
16 There's a -- where it's page 4 of his testimony,
17 mitigation for water use during construction.

18 I don't see anything that indicates that
19 it's feasible to develop a project in a manner
20 where you would hook up into all the recycled
21 water first. I mean there's --

22 HEARING OFFICER CELLI: That sounds like
23 something that we're all going to end up reading
24 briefs, and I have the feeling.

25 MR. BABULA: Well, I think it's a

1 factual issue that hopefully the applicant,
2 they'll talk to. I know my people will speak to
3 that, too. But they haven't addressed it at all.

4 But, --

5 HEARING OFFICER CELLI: So really, I
6 just --

7 MR. BABULA: Okay, I will --

8 HEARING OFFICER CELLI: -- keep it to
9 the factual level in his testimony, and we can
10 talk about the bigger picture.

11 MR. BABULA: Okay.

12 CROSS-EXAMINATION

13 BY MR. BABULA:

14 Q Well, then, my one question then would
15 be what did you look at to determine that it's
16 feasible for the applicant to acquire the recycled
17 water first?

18 A I didn't testify as to feasibility. I
19 have, in fact, attended workshops where I've heard
20 representatives of RCSD and California City talk
21 about feasibility and timing questions. But
22 that's not my testimony, and presumably that will
23 be briefed based on their testimony.

24 MS. GULESSERIAN: And as we've noted, we
25 intend to cross-examine the witnesses that staff

1 has identified and the applicant has identified on
2 this issue.

3 HEARING OFFICER CELLI: Okay, so further
4 cross?

5 MR. BABULA: That's all I have.

6 HEARING OFFICER CELLI: Applicant, cross
7 of this witness, please?

8 MS. LUCKHARDT: No cross.

9 HEARING OFFICER CELLI: Thank you, Mr.
10 Marcus. Is there any redirect of this witness?

11 MS. GULESSERIAN: There is none.

12 HEARING OFFICER CELLI: Thank you. Then
13 please call your next witness.

14 We're dealing with water. Before you do
15 let me just, let's go off the record for a second.

16 (Off the record.)

17 HEARING OFFICER CELLI: Okay, with that
18 then I'm going to shift to applicant because I
19 just want to hear again for the record that
20 applicant has no further witnesses as to water at
21 this time?

22 MS. LUCKHARDT: That is correct.

23 HEARING OFFICER CELLI: Okay. And we've
24 received all of your water exhibits?

25 MS. LUCKHARDT: Right.

1 HEARING OFFICER CELLI: Okay. Yes, we
2 have. I start getting confused at this point.
3 Near lunch, you know. So, staff, at this time
4 you're going to call two witnesses.

5 MR. BABULA: Well, first I've got my
6 staff here just to address the specific issues
7 that CURE brought up regarding the construction
8 water. So if they could be sworn in, then we
9 can --

10 HEARING OFFICER CELLI: How long are
11 they going to take?

12 MR. BABULA: Maybe three minutes, five,
13 something like that.

14 HEARING OFFICER CELLI: Okay, then I
15 think we can do this --

16 MR. BABULA: I think we should get this
17 done.

18 HEARING OFFICER CELLI: Well, let's do
19 that. Marlee, if you wouldn't mind.

20 Please rise and be sworn.

21 Whereupon,

22 CASEY WEAVER and JOHN FIO
23 were called as witnesses herein, and after first
24 having been duly sworn, were examined and
25 testified as follows:

1 HEARING OFFICER CELLI: Please state
2 your name and spell it for the record.

3 MR. WEAVER: My name's Casey Weaver,
4 C-a-s-e-y W-e-a-v-e-r.

5 HEARING OFFICER CELLI: You're from?

6 MR. WEAVER: I'm in the water unit with
7 the Energy Commission.

8 HEARING OFFICER CELLI: Thank you.

9 MR. FIO: And I'm John Fio, F-i-o. And
10 I'm a contractor to the Water Commission, I mean
11 the Energy Commission.

12 (Laughter.)

13 HEARING OFFICER CELLI: Thank you, go
14 ahead, Mr. Babula.

15 DIRECT EXAMINATION

16 BY MR. BABULA:

17 Q Okay, first I just want to establish
18 that the two of you were the primary authors on
19 the soil and water sections in both the FSA, the
20 supplemental section we submitted as exhibits, and
21 the final supplemental version that the applicant
22 has in their exhibit, which is the final condition
23 of certification that we had agreed with last
24 week.

25 MR. WEAVER: Yes, I was an author of the

1 FSA.

2 MR. FIO: Yes, and I was, too.

3 HEARING OFFICER CELLI: And when you
4 speak, since we're going to do this by way of
5 panel, I'm going to, after every question and
6 whoever you address it to, you're going to have to
7 identify yourself as the speaker each time for the
8 benefit of the transcript. Thank you.

9 MR. BABULA: Okay, you've already
10 submitted extensive testimony in the FSA, both of
11 you regarding water resources, so there's no need
12 to repeat any of that testimony.

13 CURE has submitted testimony from David
14 Marcus, both written and you just heard it in the
15 oral format. Have you reviewed the previously
16 submitted written testimony?

17 MR. WEAVER: This is Casey Weaver. Yes,
18 I have.

19 MR. FIO: This is John Fio, and yes, I
20 have.

21 MR. BABULA: Okay. Do you have any
22 response to CURE's suggestion here that recycled
23 water should be used for construction, and
24 response to what Mr. Marcus just testified to?

25 MR. WEAVER: Yes. Again, this is Casey.

1 The availability of recycled water is present in
2 both California City and Rosamond. However, there
3 is no delivery system readily available for use in
4 construction on the property.

5 Additionally, the volumes available from
6 both those facilities are really insignificant
7 compared to the volumes of water required for the
8 construction.

9 My calculations show that California
10 City could potentially produce 1.4 percent of the
11 construction water by trucking that water in
12 10,000-gallon trucks at a rate of one truck every
13 53 minutes. So that would be two trucks on the
14 road 24/7 for five months.

15 Additionally, for Rosamond, that's a,
16 you know, 42-mile run for trucks. They would be
17 more frequent than the California City one, the
18 longer distance. But also they could provide up
19 to 3.4 percent of the construction water.

20 Looking at the volumes, that's really
21 insignificant. And I would say not really
22 reasonably available for that use.

23 MR. BABULA: Now for the, in your
24 analysis of the use of construction water, is
25 there, do you find that there's appropriate

1 mitigation to deal with the use of that water?

2 HEARING OFFICER CELLI: I just wanted
3 to, when you say that water, what water are we
4 talking about?

5 MR. BABULA: Talking about the use of
6 the onsite potable water for construction.

7 HEARING OFFICER CELLI: Okay, thank you.

8 MR. WEAVER: Yeah, we've, this is Casey
9 Weaver again. We looked at the amount of water
10 that would be used. We ran different models using
11 the estimated volume of water required for
12 construction.

13 Looked at what kind of drawdowns we'd
14 expect, what impacts could possibly occur in the
15 area. Determined that there really wouldn't be
16 significant impacts to other users of groundwater
17 in the vicinity during that period of time.

18 And set up conditions of certification
19 to measure groundwater declines or water levels
20 dropping during the construction period. And
21 developed mitigation measures in the event that
22 declines did occur enough to significantly impact
23 neighboring wells.

24 HEARING OFFICER CELLI: And that data is
25 in a condition right now? There's a condition

1 that says what must have, and if there is one,
2 there's a condition that says what is the
3 significant drawdown, and two, what measures must
4 be implemented in the event if that threshold of
5 significance is met?

6 MR. WEAVER: Yes, that's correct.
7 That's in soil and water condition, well,
8 condition of certification soil and water-1.

9 HEARING OFFICER CELLI: Thank you.

10 (Pause.)

11 MR. WEAVER: In summary, I'd like to
12 throw a little thing together here that I drafted
13 up.

14 For construction Beacon proposes to use
15 up to 8086 acre feet of onsite groundwater. This
16 number equates to approximately 7.6 million
17 gallons per day.

18 I'd like to emphasize that the
19 construction water use is temporary. The majority
20 of the water use will occur in the first five
21 months of construction.

22 Groundwater modeling indicates there
23 will not be a long-term impact to water supply or
24 significantly impact neighboring wells. And the
25 groundwater well monitoring program and mitigation

1 measures provided in the conditions of
2 certification will track site groundwater
3 conditions and provide measures to mitigate
4 groundwater impacts to neighboring wells if they
5 develop.

6 MR. BABULA: I don't have any further
7 questions.

8 HEARING OFFICER CELLI: Cross by
9 applicant, please.

10 MS. LUCKHARDT: No cross.

11 HEARING OFFICER CELLI: Cross by CURE,
12 please.

13 MS. GULESSERIAN: Thank you.

14 CROSS-EXAMINATION

15 BY MS. GULESSERIAN:

16 Q Mr. Weaver, what drives the need for
17 large amounts of water at the start of
18 construction?

19 MR. WEAVER: This is Casey Weaver. The
20 project plan is to excavate as much as 8 million
21 cubic yards of soil during the construction phase.
22 The schedule is, I'm not real clear on the exact
23 schedule. Initially I thought they were going to
24 do the drainage channel first. They may not be
25 obligated to do that.

1 However, the construction program is
2 designed to occur during the first five months of
3 construction. Moving 8 million cubic yards of
4 soil is going to require a significant amount of
5 water for dust suppression, for compaction, for
6 use in building materials, concrete, soil
7 conditioning for compaction, different
8 construction needs.

9 MS. GULESSERIAN: Okay. So you said
10 you're not aware of the construction schedule?

11 MR. WEAVER: Well, the schedule is going
12 to be in five months. I'm talking about the
13 sequence. Whether they're going to build the
14 channel first, or do grading and channel -- well,
15 they won't do the channel construction -- they
16 need to maintain the flow across the site for the
17 100-year flood through Pine Tree Creek.

18 So, there's options that they can use in
19 their sequencing. I don't know what that
20 procedure is.

21 MS. GULESSERIAN: Okay, so if there are
22 options in how to phase in project construction.
23 Is it possible that they could be phased in to
24 smooth out the water demand so that the bulk of it
25 would not occur within the first five months?

1 MS. LUCKHARDT: Objection. I'm not sure
2 that this is relevant or correct for this witness,
3 and maybe I'm jumping all over Jared's --

4 HEARING OFFICER CELLI: Overruled. It's
5 relevant.

6 MR. BABULA: The sequence of
7 construction.

8 MS. LUCKHARDT: Yeah.

9 MR. BABULA: I think that might be more
10 of an engineering question. We know what's going
11 to happen, but if it's A, B, C or D, C, K.

12 HEARING OFFICER CELLI: If you know,
13 Mr. Weaver.

14 MR. WEAVER: I don't know the
15 sequencing. Their program is to do this mass
16 grading within the first five months. The mass
17 grading is going to be to level the site to a
18 particular slope, approximately 1 percent.

19 HEARING OFFICER CELLI: Oh, mass
20 grading?

21 MR. WEAVER: Grading.

22 HEARING OFFICER CELLI: I thought you
23 were saying masquerading.

24 (Laughter.)

25 HEARING OFFICER CELLI: Just to get back

1 to --

2 MR. WEAVER: Mass grading.

3 HEARING OFFICER CELLI: Just to get back
4 to the question, the question was, Ken, in your
5 opinion, is it possible to change the sequence of,
6 I guess the water intensive construction needs to
7 a different time and sequence? Do I have that
8 right?

9 MS. GULESSERIAN: Right.

10 MS. LUCKHARDT: I'm just not sure if
11 that's an appropriate question for this witness.
12 This is a water expert. And it's my understanding
13 that he takes the water numbers that are presented
14 by others and then looks at them to see whether he
15 thinks they're appropriate to cover the work
16 that's being done. But isn't necessarily
17 testifying as an expert on construction methods or
18 moving the construction sequence from one time
19 period to another.

20 So I'm just not sure that this is within
21 his areas of expertise.

22 HEARING OFFICER CELLI: That's
23 reasonable. I think that that may go a little
24 beyond the pale of what we're trying to accomplish
25 here. So, I think you'd better --

1 MS. GULESSERIAN: I can move on. Did
2 you evaluate different phases, different options
3 for phasing in construction?

4 MR. WEAVER: No. I looked at the time
5 of mass grading of the initial construction, the
6 amount of soil to be moved, and the amount of
7 water that was going to be required to suppress
8 the dust and manage the soils onsite.

9 MS. GULESSERIAN: Okay, so if you were
10 provided with different options for phasing
11 construction, such as would occur if, you know,
12 evaluations to cultural resources on part of the
13 site was deferred to a later time, was to not
14 allow construction on that part of the site, and
15 then you had different numbers regarding the
16 amount of soil that needs to be moved during the
17 first five months, would that change your analysis
18 of how much water needs to occur within the first
19 five months?

20 MS. LUCKHARDT: Objection, I'd like to
21 clarify that this is a hypothetical, because I
22 don't believe it reflects the facts in evidence on
23 cultural resources at this time.

24 HEARING OFFICER CELLI: I think it's
25 clear that it's hypothetical. You may answer that

1 question.

2 MR. WEAVER: I didn't evaluate that. I
3 looked at the schedule, which is intense. It's a
4 very aggressive construction schedule. Phasing
5 sequencing didn't fit into the overall
6 requirements.

7 You know, the five-month construction
8 period for moving 8 million cubic yards is moving
9 a lot of soil. And in order to keep the dust
10 suppressed and to properly condition the soils,
11 that was my focus. Not on a phased approach of
12 any particular months, other than what they
13 provided in the AFC.

14 MS. GULESSERIAN: Okay, thank you. The
15 FSA states that water use during construction will
16 be 6574 acre feet on page 4.9-16, and then 8080
17 acre feet on page 6-4. And then it says that it's
18 going to exceed 8086 on page 4.9-55.

19 Then we have a condition of
20 certification that says up to 8086 acre feet is
21 going to be permitted.

22 Have you determined which number is the
23 right number? What number will actually be used
24 during construction?

25 MR. WEAVER: We have limited the volume

1 for what they can use in construction to 8086 acre
2 feet. They may use less. We hope they use less.
3 We've conditioned them to use no more than 8086.

4 HEARING OFFICER CELLI: Maximum use is
5 how much?

6 MR. WEAVER: 8086 acre feet for the
7 construction period.

8 HEARING OFFICER CELLI: 8-0-8-6. Thank
9 you.

10 MS. GULESSERIAN: And what is the -- can
11 you summarize what the 8086 is based on?

12 MR. WEAVER: Yes. Initially in the AFC
13 the applicant provided a volume of water required
14 for construction. Looking at that amount of
15 water, that amount of soil, I used the same ratio
16 of soil to water that they had come up with. They
17 had 4,000 or 3370 acre feet of water.

18 Adding into that the -- it didn't appear
19 in the information that they provided that they
20 had accounted for the 3 million cubic yards for
21 the diversion channel. So I included that same
22 ratio into that other 3 million cubic yards of
23 soil and came up with 6574 acre feet required for
24 the 8 million cubic yards of soil to be excavated,
25 recompacted, and organized onsite.

1 Further, I went through it. The initial
2 estimate of silt content, was 7.5 percent.
3 Looking through the boring logs and the sample
4 results, it varied between 5 and 7.79 percent silt
5 content.

6 I averaged that; looked at the
7 difference between what they had submitted
8 initially -- excuse me, the difference between 7.5
9 percent and the average was 22.9. I rounded that
10 to 23 percent and increased the amount of water
11 required by that 23 percent, which is multiplied
12 6574 by 23 percent, which yields 1512 acre feet.
13 Added to the 6574, comes to 8086.

14 MS. GULESSERIAN: Thank you.

15 MR. WEAVER: You're welcome.

16 MS. GULESSERIAN: Have you reviewed the
17 applicant's rebuttal testimony, that of Michael
18 Flack, exhibit 335?

19 MR. WEAVER: I'm sure I have. I don't
20 know it by number.

21 MS. GULESSERIAN: In that rebuttal the
22 applicant claims that they have calculated the
23 impacts on water tables of pumping 8000 acre feet
24 in five months. And that those are not
25 significant. Does staff agree with those

1 findings?

2 MS. LUCKHARDT: I guess I -- if that's
3 all she's asking, that's fine.

4 MR. FIO: Yes, this is John Fio. And in
5 terms of analysis in modeling the construction
6 scenario, there was no exceedances of the
7 thresholds that were used in the final staff
8 assessment. So our conclusion was that there
9 would be no impact.

10 And furthermore, we felt that the
11 monitoring program that was in place that would
12 actually be measuring what really goes on out
13 there would be even more effective than the
14 modeling, itself.

15 MS. GULESSERIAN: Is staff's analysis of
16 those impacts from 8086 acre feet that are in the
17 applicant's rebuttal testimony somewhere in the
18 FSA?

19 MR. BABULA: Well, the rebuttal
20 testimony came out after the FSA. Are you asking
21 whether there's any analysis on groundwater for
22 construction?

23 MR. FIO: There is.

24 HEARING OFFICER CELLI: For the record,
25 Ms. Gulesserian nodded in the affirmative.

1 MS. GULESSERIAN: Yes.

2 HEARING OFFICER CELLI: Thank you.

3 MS. GULESSERIAN: Thank you.

4 HEARING OFFICER CELLI: And you may
5 answer the question.

6 MR. FIO: This is John Fio. What we did
7 do was we actually looked at a worst case scenario
8 where we looked at the higher construction water
9 use of the 8086 acre feet. Based it on with the
10 project using groundwater.

11 And so this would represent a
12 substantially greater amount of groundwater being
13 used. And our determination was that there was
14 not a significant change in the impact analysis.

15 HEARING OFFICER CELLI: Any further
16 cross?

17 MS. GULESSERIAN: Does staff -- have you
18 had an opportunity -- asking Mr. Weaver -- to
19 review Mr. Marcus' calculations in his testimony
20 regarding the rate of water use during
21 construction?

22 MR. WEAVER: What I thought I saw was
23 the rate of use of recycled water delivered of 27
24 percent of construction water requirements for
25 recycled water. And I didn't bother with that

1 because I don't think it's a viable alternative.

2 I don't believe that the recycled water is
3 readily available.

4 MS. GULESSERIAN: So do you disagree
5 with the testimony?

6 MR. WEAVER: Excuse me, for
7 construction. We know it was going to be
8 available for operation.

9 MS. GULESSERIAN: So do you disagree
10 with the conclusion that 27 percent of the water
11 would be available for construction?

12 MR. WEAVER: If the water's not
13 available to use, then it doesn't matter what
14 number that is if it's not going to be available.

15 MS. GULESSERIAN: Assuming that a
16 pipeline is constructed prior to construction of
17 the project, would you disagree with that number?

18 MR. WEAVER: I didn't evaluate the
19 number because I didn't think that it was a viable
20 element of the project.

21 HEARING OFFICER CELLI: So your question
22 was a hypothetical, assuming that there was a
23 construction pipeline in place --

24 MS. GULESSERIAN: Prior to construction.

25 HEARING OFFICER CELLI: -- let's say

1 from Rosamond or California City to the --

2 MR. BABULA: Right, and there's no
3 evidence in the record that it would be available
4 before.

5 HEARING OFFICER CELLI: I understand.
6 That's a hypothetical question. Please, Ms.
7 Gulesserian, go ahead.

8 MS. GULESSERIAN: Thank you. I don't
9 have any further questions.

10 HEARING OFFICER CELLI: Thank you. Any
11 cross from applicant?

12 MS. GULESSERIAN: Oh, sorry, I need to
13 clarify who is sponsoring exhibit 337. Yeah, this
14 is -- if you wouldn't mind I have a few more
15 questions regarding the revised conditions that
16 were sent out on Friday night.

17 HEARING OFFICER CELLI: 339?

18 MS. LUCKHARDT: This is the revised
19 conditions of certification for soil and water-1
20 and appendix I. It was discussed in the parties
21 pursuant to a conference all upon which CURE was
22 given an opportunity to attend. I can't remember
23 how much of it they actually participated in. And
24 that is the result that was discussed on that
25 call, what is in exhibit 337.

1 HEARING OFFICER CELLI: This is
2 stipulated settled conditions of certification?

3 MS. LUCKHARDT: Correct.

4 HEARING OFFICER CELLI: Thank you. Who
5 will be sponsoring that?

6 MS. LUCKHARDT: We have offered it into
7 evidence under -- we can have Mr. Flack sponsor
8 it. We offered it into evidence as a stipulated
9 settlement document between -- or stipulated
10 resolution to --

11 HEARING OFFICER CELLI: That's correct.
12 At the prehearing conference --

13 MS. LUCKHARDT: -- issues --

14 HEARING OFFICER CELLI: -- we asked the
15 parties to stipulate to --

16 MR. BABULA: Right.

17 MS. LUCKHARDT: Yeah.

18 MS. GULESSERIAN: I'm going to --

19 MR. BABULA: But the authors are right
20 here.

21 HEARING OFFICER CELLI: Okay. Well,
22 then, do you want to just, we'd be willing to take
23 a stipulation.

24 MS. GULESSERIAN: Would you mind if I
25 just asked a few more questions regarding exhibit

1 337 of these witnesses?

2 HEARING OFFICER CELLI: Okay. I thought
3 it was 339. It's 337 you're talking about?

4 MS. GULESSERIAN: It's -- sorry, I might
5 have the number wrong.

6 MS. LUCKHARDT: I believe it's 337.

7 HEARING OFFICER CELLI: Okay. So
8 revised soil and water conditions of
9 certification.

10 MS. GULESSERIAN: Thank you. Looking to
11 the table provided in this condition what
12 determines when the California City collection
13 system construction year starts?

14 MR. WEAVER: That would be the year in
15 which they begin construction.

16 MS. GULESSERIAN: When do you expect
17 them to begin construction? What is it based on?

18 MR. WEAVER: You know, the project will
19 have to be improved. Couldn't put a schedule in.

20 It's not based on that, it's based on when it
21 will be constructed, assuming that it will be
22 before the beginning of operation. That's what
23 this table's based on.

24 MS. GULESSERIAN: So what determines
25 when that starts? Is it the approval of this

1 project?

2 MR. WEAVER: You'd have to talk to
3 California City.

4 MS. GULESSERIAN: Okay. Could
5 construction of the collection system start before
6 power plant operation?

7 MR. WEAVER: That's part of the
8 construction; that's the California City, the
9 collection system. Again, you'd --

10 MS. GULESSERIAN: So, just in your --

11 MR. WEAVER: -- have to talk to
12 California City for the sequence.

13 MS. GULESSERIAN: -- that the
14 construction of the collection system could start
15 before power plant operation because it's
16 California City's construction project?

17 MR. WEAVER: It's California City's
18 construction project. What their schedule is I
19 don't know. I don't know what date they're going
20 to start. This table indicates what they can do
21 per year once construction starts. So --

22 MS. GULESSERIAN: Okay, I'm trying to
23 determine who has control over this condition of
24 certification as to timing. Is it the applicant?
25 Is it the Energy Commission's approval of the

1 project? Or is it California City?

2 MR. BABULA: Well, this is a condition
3 of certification. And we only have authority over
4 the applicant, so this condition of certification
5 is on the applicant.

6 If, for some reason, the water isn't
7 available or a different thing, then the
8 applicant's stuck. That's what they can get.
9 They can get up to, as it lifts out, how much acre
10 feet of onsite water they can use.

11 MS. GULESSERIAN: You just said that --
12 are you testifying?

13 MR. BABULA: Well, I --

14 MS. GULESSERIAN: I'm sorry, --

15 MR. BABULA: -- the condition of
16 certification is a legal issue --

17 MS. GULESSERIAN: -- I'm confused what
18 witness --

19 MR. BABULA: It's a legal issue --

20 (Parties speaking simultaneously.)

21 MR. BABULA: -- the conditions can be
22 on. It can only be on the applicant.

23 HEARING OFFICER CELLI: Right. In other
24 words, if there's a condition precedent in the
25 condition of certification, and that has not been

1 fulfilled, then applicant can't go forward. And
2 that is a risk that the applicant assumes.

3 MS. GULESSERIAN: Is there, Mr. Weaver,
4 is there a condition of certification that
5 prohibits construction of the power plant until it
6 is verified that California City will be
7 delivering water?

8 MR. WEAVER: No. California City is one
9 of two options. They've agreed to use recycled
10 water for power plant cooling. And the
11 alternative has not yet been selected.

12 MS. GULESSERIAN: Is there a condition
13 of certification prohibiting construction of the
14 project without -- let me make sure I'm phrasing
15 this right.

16 Is there a condition of certification
17 prohibiting construction if there's no guaranteed
18 recycle water alternative?

19 MR. WEAVER: The only way that they can
20 use groundwater for power plant cooling is with
21 the California City option. If they select a
22 different alternative they can't use groundwater
23 for cooling. They're limited to 153 acre feet per
24 year of groundwater use for balance of plant use.

25 MS. GULESSERIAN: Okay. So, if the

1 applicant selects California City recycled water
2 alternative, and California City does not
3 construct the pipeline, the collection system,
4 excuse me, the collection system until after
5 operations, would that be -- well, then what
6 happens?

7 MR. WEAVER: They wouldn't be allowed to
8 operate.

9 MS. GULESSERIAN: Which condition sets
10 forth these parameters for not allowing operation
11 in the event that the recycled water alternatives,
12 or the recycled facilities are not upgraded and
13 the pipelines are not constructed?

14 HEARING OFFICER CELLI: I might be able
15 to short-circuit --

16 MS. LUCKHARDT: I'd just direct your
17 attention to --

18 HEARING OFFICER CELLI: If I may,
19 just --

20 MS. LUCKHARDT: -- soil and water-18.

21 HEARING OFFICER CELLI: In our general
22 conditions if there's any failure of conditions
23 there's no license. And so, there isn't
24 necessarily a needed explicit condition on that
25 point.

1 But the fact is if there's noncompliance
2 there's no operation. And so if the water options
3 are California City or Rosamond City, these are
4 your options for cooling water, and they want to
5 go to a third option, they either have to amend or
6 not. But there will be no operation without full
7 compliance with our conditions.

8 MS. GULESSERIAN: Excuse me a moment.

9 HEARING OFFICER CELLI: I'd just note
10 for the record it's 12:35, and we're going to be
11 done through this in about five minutes about 20
12 minutes ago.

13 MR. BABULA: I was.

14 MR. WEAVER: To resolve that last
15 question, soil and water condition 18 satisfies
16 that requirement.

17 HEARING OFFICER CELLI: Did you hear
18 that, Ms. Gulesserian? 18?

19 MR. WEAVER: Soil and water-18.

20 MS. GULESSERIAN: Thank you. What's the
21 latest possible date that California City
22 collection system construction year one can begin
23 in order to provide these numbers that are listed
24 here?

25 MR. WEAVER: Again, we didn't select a

1 date. And that's a contractual thing with the
2 entities that are going to do the construction.

3 MS. GULESSERIAN: Right. I mean so how
4 do you know -- can it occur after commercial
5 operation of the project?

6 MR. WEAVER: No. They're limited within
7 60 days. They have to have -- what's the number
8 there -- 14? Within 60 days prior to the
9 connection of the recycled water pipeline the
10 owner shall submit two copies of an executed
11 agreement to supply 1424 acre feet of water.

12 MS. GULESSERIAN: So you just stated
13 within 60 days prior to connection to the system
14 they have to provide a letter of intent?

15 MR. WEAVER: No, that would be for --
16 no, that they -- more than the intent, that they
17 have an executed agreement for the supply.

18 MS. GULESSERIAN: Okay, so -- but I
19 guess that doesn't answer the question. If the --
20 what happens if the pipeline does not -- is not
21 constructed?

22 MR. WEAVER: They wouldn't be able to
23 operate. They wouldn't have the water supply --

24 MS. GULESSERIAN: Okay, thank you.

25 MR. WEAVER: -- to the site.

1 HEARING OFFICER CELLI: Anything
2 further? Any further cross, Ms. Gulesserian?

3 MS. GULESSERIAN: No, no further cross.

4 HEARING OFFICER CELLI: Thank you.
5 Applicant, any cross of these witnesses?

6 MS. LUCKHARDT: No cross.

7 HEARING OFFICER CELLI: Redirect by
8 staff of your witnesses?

9 MR. BABULA: No.

10 HEARING OFFICER CELLI: Any other
11 witnesses that staff wanted to call in rebuttal
12 regarding water?

13 MR. BABULA: Well, you have Cal City and
14 Rosamond folks to sponsor the exhibit, if this is
15 an appropriate time for that.

16 HEARING OFFICER CELLI: What we're going
17 to do is we're going to take a lunch break. It's
18 20 of one. I think if we break until 1:00, we can
19 resume at 1:00. But when we resume I want to know
20 what you're going to be doing. You're calling --

21 MR. BABULA: Well, I would like to try
22 to finish water now. I mean, I just want them to,
23 you know. Really the question is what does CURE
24 have to cross on, because what I --

25 HEARING OFFICER CELLI: They're finished

1 with their water people at this time.

2 MS. GULESSERIAN: We have cross for
3 Rosamond Community Services District and
4 California City.

5 HEARING OFFICER CELLI: Okay. So I
6 think we can call that witness after lunch. And
7 that should take about ten minutes tops. And ask
8 your questions of the Rosamond water person.

9 And so you're going to have them sponsor
10 testimony, ask a couple questions, I imagine;
11 applicant to ask questions. CURE will be able to
12 cross-examine. Then you can redirect. And then I
13 believe that's the end of water.

14 MS. GULESSERIAN: I also have --

15 HEARING OFFICER CELLI: Would that --

16 MS. GULESSERIAN: Sorry. I also have a
17 few questions for the applicant's witness.

18 HEARING OFFICER CELLI: But the
19 applicant doesn't have a witness.

20 MS. GULESSERIAN: They have somebody
21 sponsoring water testimony.

22 HEARING OFFICER CELLI: Which witness is
23 that?

24 MS. GULESSERIAN: Duane McCloud.

25 HEARING OFFICER CELLI: Okay. And is he

1 here?

2 MS. LUCKHARDT: He will not be here
3 until about 1:30. That's the engineer. I'm not
4 sure what questions she had; that wasn't indicated
5 in the information on --

6 HEARING OFFICER CELLI: I think we had
7 like --

8 MS. LUCKHARDT: -- who she wanted to
9 cross-examine in this area. So, we have Mike
10 Flack is here, if she has questions on the
11 testimony he has sponsored.

12 If she has water questions of Mr.
13 McCloud he won't be here until about 1:30.

14 HEARING OFFICER CELLI: Here's what
15 we're going to do. We're going to take a 20-
16 minute break. We're going to resume at 1:00.

17 Now, folks, by now we should have
18 finished water and biology. And we haven't even
19 gotten to bio yet. So I'm going to ask the
20 parties to limit your inquiries.

21 If you're just calling witnesses to
22 sponsor testimony that's coming in that should
23 take all of about two minutes. And then cross on
24 these witnesses. How many questions do you have,
25 Ms. Gulesserian, for Mr., the gentleman from

1 Rosamond?

2 MS. GULESSERIAN: I have eight.

3 HEARING OFFICER CELLI: Questions for --

4 MS. GULESSERIAN: About eight to ten
5 questions.

6 HEARING OFFICER CELLI: Okay. And then
7 how many questions do you have for --

8 MS. GULESSERIAN: That is for the
9 Rosamond person --

10 HEARING OFFICER CELLI: -- Duane McCloud
11 that you wanted to ask?

12 MS. GULESSERIAN: And for the California
13 City representative, it's the same questions.

14 HEARING OFFICER CELLI: Okay. Well,
15 we'll call them as a panel. But we need to move
16 with alacrity. What about your questions for
17 applicant's witness?

18 MS. GULESSERIAN: Those I have 13
19 questions.

20 HEARING OFFICER CELLI: Okay. We'll do
21 this. Okay, five minutes when we resume at 1:00,
22 we'll take five minutes for the gentlemen from
23 Rosamond and California City as a panel. And then
24 we'll give you another five, maybe ten minutes on
25 Duane McCloud when he comes. I guess you'll have

1 to hold that in abeyance until he arrives.

2 And then we need to move on. And that's
3 it on water, is that correct? Do I have that
4 right?

5 MS. GULESSERIAN: Yes. I also have a
6 suggestion that we fit transmission system
7 engineering into that short amount of time,
8 because we have just a little bit of time on that
9 issue. And then we could dismiss our witness for
10 the remainder of the hearing.

11 HEARING OFFICER CELLI: That's fine,
12 too. If we end up having to wait for Mr. McCloud,
13 maybe we can insert a little transmission --

14 MS. LUCKHARDT: Yeah, the only problem
15 is that our witness on transmission system
16 engineering is Duane McCloud.

17 (Laughter.)

18 MS. LUCKHARDT: We were supposed to
19 start with biology.

20 HEARING OFFICER CELLI: Better to be a
21 specialist these days.

22 Let's break now and then we will resolve
23 these issues when we get back. And when we resume
24 we're going to take testimony from the gentlemen
25 from Rosamond and California City.

1 (Whereupon, at 12:39 p.m., the hearing was
2 adjourned, to reconvene at 1:00 p.m.,
3 this same day.)

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1 your name and spell it for the record.

2 MR BEVINS: Michael Bevins, Public Works
3 Director, City of California City. B-e-v-i-n-s.

4 MR. LaMOREAUX: I'm Dennis LaMoreaux
5 representing Rosamond Community Services District.
6 Last name is spelled L-a-M-o-r-e-a-u-x.

7 HEARING OFFICER CELLI: Thank you. And
8 when you testify please remember to state your
9 name each time before you start because we're
10 going to let the parties ask you jointly
11 questions. So before you answer state your name.
12 Go ahead.

13 MR. BABULA: Okay, thank you.

14 DIRECT EXAMINATION

15 BY MR. BABULA:

16 Q The primary reason you're here is to
17 sponsor exhibit 506, which exhibit 506 is, was
18 previously submitted to the docket. It contained
19 a proposed plan by both Rosamond and California
20 City to provide the project with tertiary treated
21 recycled water.

22 And so what I want you to do is just
23 confirm that, in fact, this is a proposal from
24 your respective locations. And just to briefly
25 summarize the main content of the proposal so we

1 can get that in the record.

2 And I'll start with Rosamond, and
3 Dennis, thank you.

4 MR. LaMOREAUX: Dennis LaMoreaux with
5 Rosamond Community Services District. The
6 District did submit a letter of intent dated
7 August 14, 2009.

8 The three major components of that were
9 additional treatment to bring existing wastewater
10 flows to tertiary level, transmission facilities
11 to move the water to the project site, and
12 seasonal storage at the project site to handle
13 peak flows needed during the summer.

14 The additional treatment facilities at
15 Rosamond would be handled by Rosamond with a
16 contribution by Beacon of the transmission
17 facilities and storage facility were proposed to
18 be constructed by Beacon.

19 MR. BABULA: Has there been any changes
20 to storage?

21 MR. LaMOREAUX: Based on discussions at
22 earlier hearings the District has reworked a
23 proposal to move that storage back to the Rosamond
24 site, and re-size the transmission line to have
25 capacity for handling peak flows.

1 But the three major components are still
2 the same, it's just a matter of shuffling them
3 around a little bit.

4 MR. BABULA: Thank you. Now for
5 California City.

6 MR BEVINS: California City's proposal
7 essentially is the same as Rosamond's. We
8 proposed a transmission main and a wastewater
9 treatment plant expansion from our current 1.5
10 million gallons a day to 3 million gallons a day.

11 We also are proposing a sewer main
12 expansion which would bring an additional almost
13 2500 septic tanks on to the line to be able to
14 provide the additional flow necessary.

15 MR. BABULA: Is that it?

16 MR BEVINS: That's it.

17 MR. BABULA: One question for California
18 City. Is there a benefit to pulling homes off of
19 the septic system that this project can assist?

20 MR BEVINS: California City has a 1989
21 contract, letter of understanding, with the
22 Lahontan Regional Water Quality Control Board
23 which limits our ability to build facilities,
24 residential homes to two homes per acre.

25 We have a large number of already-

1 platted lots which will be impacted by this. And
2 so the benefit to us is that it will allow our
3 city to grow in --

4 MS. GULESSERIAN: Objection, this is new
5 testimony that we've never -- excuse me, this is
6 new testimony that hasn't been submitted in this
7 proceeding. And that is what they're trying to
8 put in right now is some sort of analysis of
9 benefits of upgrading their facilities.

10 HEARING OFFICER CELLI: We did hear this
11 as comment, I'm trying to remember when.

12 MS. LUCKHARDT: At the December 1st
13 status conference.

14 HEARING OFFICER CELLI: That's right.
15 There was comment at that time. So this isn't the
16 first we've heard of it. I think we can just get
17 a good summary of it.

18 MR BEVINS: That's actually the end of
19 the summary.

20 MR. BABULA: Okay.

21 HEARING OFFICER CELLI: So that -- the
22 exhibit --

23 MR. BABULA: 506.

24 HEARING OFFICER CELLI: -- 506 does
25 contain a discussion of the benefits to California

1 City. Because I remember in your comments, Mr.
2 Bevins, you were talking about sort of a toxic
3 state in which the septic systems were, your
4 population had risen to the point that there was
5 some danger to the groundwater.

6 MR BEVINS: Our principal problem here
7 is that California City was a preplanned
8 community, as we told you in December. And in
9 that lots were created. In the '60s, early '60s
10 when this was done there was no particular problem
11 with that.

12 However, federal law has changed and
13 Lahontan required us in '89 to sign a letter of
14 intent which said that we would only allow a
15 certain building ratio.

16 That will eliminate about a third of the
17 already platted building lots from their ability
18 to grow and develop. Because to exceed that would
19 create a groundwater problem. With too much
20 density, a saturation problem with too much septic
21 density.

22 HEARING OFFICER CELLI: Thank you. And
23 that's contained in 506, is that correct?

24 MR. BABULA: I think the raw data
25 information and costs are in 506.

1 HEARING OFFICER CELLI: Thank you. Do
2 you have anything further --

3 MR. BABULA: I have no further
4 questions.

5 MS. LUCKHARDT: I have three questions
6 starting with Rosamond.

7 CROSS-EXAMINATION

8 BY MS. LUCKHARDT:

9 Q There are two expansions, it's my
10 understanding. The one is already under
11 construction at this time. And are there other
12 projects for the second expansion to your
13 facility, are there other projects that are also
14 looking to obtain tertiary treated water from you,
15 as well?

16 MR. LaMOREAUX: This is Dennis
17 LaMoreaux. Yes, there's expansion to half-a-
18 million gallons a day of tertiary treatment is
19 essentially complete other than permitting.

20 And beyond that, to go to a greater
21 level of tertiary level or treatment, there are
22 other customers that that will occur for. There's
23 other solar projects that are interested, and a
24 mining operation that is interested.

25 MS. LUCKHARDT: Thank you. And,

1 Mr. Bevins, turning to you, is California City
2 required to make the changes that we've been
3 discussing with septic and upgrading your
4 treatment plant regardless of whether the Beacon
5 project goes forward?

6 MR BEVINS: Yes. And we are moving
7 forward in that direction regardless of the status
8 with Beacon.

9 MS. LUCKHARDT: And does the limitation,
10 the current limitation on houses -- for better
11 words, I'm just going to say per block, would that
12 in any way limit the number of houses you could
13 build within California City?

14 MR BEVINS: The restriction would limit
15 the density by which they could be built. It
16 restricts us to two homes per acre, which is not
17 consistent with the already platted lots for the
18 city.

19 MS. LUCKHARDT: But are you going to run
20 out of lots anytime soon? If people couldn't
21 build, if you could build six on a block --

22 MR BEVINS: I have --

23 MS. LUCKHARDT: -- do you have plenty of
24 lots?

25 MR BEVINS: I have 23,000 currently

1 platted residential unbuilt-on lots. We're not
2 likely to run out in the near future of unplatted
3 lots.

4 However, if I may, the problem is that
5 by being compliant with Lahontan's requirements, I
6 come into violation with planning areas for carbon
7 footprint reductions. Because my city winds up
8 being -- it doesn't allow me to consolidate my
9 city in a dense enough fashion to comply with
10 carbon footprint reduction requirements.

11 MS. LUCKHARDT: Thank you. I have
12 nothing further.

13 HEARING OFFICER CELLI: CURE?

14 CROSS-EXAMINATION

15 BY MS. GULESSERIAN:

16 Q This is a question for Rosamond first.
17 From the time you get notice to proceed from
18 Beacon, can you supply any water immediately to
19 the project?

20 MR. LaMOREAUX: By notice to proceed do
21 you -- this is Dennis LaMoreaux --

22 MS. GULESSERIAN: That they are going
23 with the --

24 (Parties speaking simultaneously.)

25 MR. LaMOREAUX: -- do you mean a --

1 MS. GULESSERIAN: -- Rosamond --

2 MR. LaMOREAUX: -- a signed contract?

3 MS. GULESSERIAN: Um-hum.

4 MR. LaMOREAUX: We will have half a
5 million gallons a day of tertiary water available
6 at the site, but there is no current way to move
7 that to the Beacon project site.

8 MS. GULESSERIAN: Okay. And how long
9 will it take to construct the pipeline?

10 MR. LaMOREAUX: Estimate would be
11 probably a year, maybe a little bit less. It
12 depends on how the construction contract is put
13 together. How many crews would work on that
14 project at the same time.

15 MS. GULESSERIAN: Okay. So when you get
16 a notice, or -- Beacon, how much will you be able
17 to supply in 12 months then?

18 MR. LaMOREAUX: Well, as far as the
19 District, what it has available in the way of
20 tertiary, that would not change in 12 months. It
21 would still be half a million gallons a day.

22 What would be changing is construction
23 would be well underway on the treatment plan
24 expansion that would be able to take the rest of
25 our 1.3-million-gallons-a-day flow and bring it up

1 to a tertiary level.

2 MS. GULESSERIAN: And has the
3 construction upgrades began on the wastewater
4 treatment plant?

5 MR. LaMOREAUX: Those would begin upon
6 execution of a contract with a customer.

7 MS. GULESSERIAN: Are you going to
8 upgrade your wastewater treatment facility if
9 Beacon does not select Rosamond as its recycled
10 water alternative?

11 MR. LaMOREAUX: Yes, I believe it will
12 happen. There are other interested parties in
13 that water in the desert.

14 MS. GULESSERIAN: Do you have plans to
15 do that anyways?

16 MR. LaMOREAUX: Not without a customer,
17 no.

18 HEARING OFFICER CELLI: Anything
19 further?

20 MS. GULESSERIAN: Assuming you have a
21 letter of intent, how long is it going to take to
22 reach the maximum amount of 1500 acre feet per
23 year?

24 MR. LaMOREAUX: A proposal that we've
25 received shows a construction period of two years

1 from the notice of intent.

2 MS. GULESSERIAN: And is that limit of
3 what your construction upgrades are going to
4 provide? What is the actual maximum that you can
5 supply once your construction is complete?

6 MR. LaMOREAUX: The tentative plans
7 would be to have a 2 mgd expansion which would
8 provide treatment for all the existing flow and
9 room for future growth.

10 MS. GULESSERIAN: Have you conducted an
11 environmental review for your upgrades to your
12 wastewater treatment system?

13 MR. LaMOREAUX: Which upgrades?

14 MS. GULESSERIAN: For the 1.3 million
15 gallon upgrade.

16 HEARING OFFICER CELLI: You know,
17 Ms. Gulesserian, excuse me but I just am going to
18 observe that this is something that really doesn't
19 have any relevance to our proceeding whether there
20 has been an environmental reviews of their
21 upgrades. That exceeds our jurisdiction.

22 MS. GULESSERIAN: I'm trying to
23 establish whether they are already proceeding with
24 the 1.3 or are going to be proceeding with 2.0.
25 Based on the evidence in the record, they are

1 moving forward already with the 1.3. And this is
2 the first time I'm hearing that they're going to
3 be at 2.0.

4 So I need the opportunity to --

5 HEARING OFFICER CELLI: But whether
6 they're having an EIR --

7 MS. GULESSERIAN: -- explore that.

8 HEARING OFFICER CELLI: -- is irrelevant
9 to our, the volumes are relevant. Whether they're
10 having an environmental review of it doesn't apply
11 to what we're doing.

12 MS. GULESSERIAN: Well, it is relevant
13 to, I would say it is relevant to the Commission's
14 environmental review process, since the
15 Commission, as lead agency, needs to analyze the
16 whole of the project and can't piecemeal.

17 So depending on --

18 HEARING OFFICER CELLI: It's not part of
19 our project. It is beyond our point of
20 interconnection. It's not a part of our project
21 so it's not relevant.

22 So I'm going to ask that you, I don't
23 mind you asking him what the volumes are and that
24 sort of thing. But the environmental review isn't
25 relevant after the point of your intention.

1 MS. GULESSERIAN: The FSA has in it that
2 it has the responsibility to analyze those
3 projects that are part of the project, including
4 those that are not within the licensing authority
5 of the Energy Commission.

6 HEARING OFFICER CELLI: I don't
7 understand what you're suggesting.

8 MS. GULESSERIAN: I'm just --

9 HEARING OFFICER CELLI: Perhaps you're
10 talking about some sort of a cumulative analysis
11 or something?

12 MR. BABULA: You kind of get into the
13 alternatives, which we've already submitted stuff
14 on that.

15 HEARING OFFICER CELLI: Yeah. So,
16 anyway, I'm asking that you move on.

17 MS. GULESSERIAN: Okay. Is the pipeline
18 the critical path item, or is the upgrades to your
19 facility the critical item to providing water to
20 the Beacon Energy Project?

21 MR. LaMOREAUX: To provide water --

22 MS. GULESSERIAN: Which one would be
23 ready first?

24 MR. LaMOREAUX: -- for the operation or
25 for the --

1 MS. GULESSERIAN: The --

2 MR. LaMOREAUX: For the operation?

3 MS. GULESSERIAN: For the Beacon Solar
4 Energy Project. What would you be done first
5 with, the upgrade to 1.3 or the pipeline?

6 MR. LaMOREAUX: Let me clarify what the
7 1.3 number is. That's the current inflow of
8 wastewater to our facilities. That isn't directly
9 related to Beacon.

10 MS. GULESSERIAN: Do you mean --

11 MR. LaMOREAUX: As I've stated earlier,
12 the anticipated construction of the pipeline and
13 facilities would be roughly one year after
14 contract. And the completion of the treatment
15 upgrade would be another year after that. It's a
16 two-year process.

17 MS. GULESSERIAN: Okay, thank you. What
18 was the purpose of your upgrade of your recycled
19 treatment facility?

20 MR. LaMOREAUX: The existing one?

21 MS. GULESSERIAN: Um-hum.

22 MR. LaMOREAUX: Was to provide service
23 within the community of Rosamond in accordance
24 with the planning document that we prepared.

25 MS. GULESSERIAN: And what did that

1 planning document say? What was the purpose?

2 MR. LaMOREAUX: Mostly for urban
3 irrigation, potential for future recharge
4 operations.

5 MS. GULESSERIAN: Thank you. For
6 California City. Once you have a letter of intent
7 to proceed with Beacon, how much water can you
8 supply immediately?

9 MR BEVINS: Trucks or pipes?

10 MS. GULESSERIAN: Either one. Piped.

11 MR BEVINS: It depends on the actual
12 time of the year. Currently my current recycled
13 water demand in August basically uses most of it.
14 If, however, they wanted to start construction in
15 January, they could truck to their heart's content
16 probably.

17 I'm saying maybe 500 acre feet if it was
18 trucked.

19 MS. GULESSERIAN: Okay, and how much
20 could you supply in six months?

21 MR BEVINS: Again, depending on the
22 timeframe it would still be the same because our
23 plan is to be able to deliver water for the first,
24 I believe, it's 18 months, which is what we
25 submitted I think in December, was an 18-month

1 plan. I don't have it in front of me, so I --

2 MS. GULESSERIAN: Okay, so there's 500
3 acre feet available immediately and --

4 MR. BABULA: Are you talking for
5 operation?

6 MS. GULESSERIAN: I'm talking about --

7 MR. BABULA: Because the --

8 MS. GULESSERIAN: -- when they have a
9 letter of intent to proceed with getting water
10 from California City, how long is it going to take
11 them to provide water to the Beacon Project.

12 Not asking for what purpose.

13 MR. BABULA: Okay, I mean, because it's
14 laid out in conditions of certification soil and
15 water-1. It lays out how much. It staggers, the
16 first year, second year, third year. So it's
17 already laid out of what the applicant will be
18 receiving.

19 MS. GULESSERIAN: I understand what the
20 condition of certification says. I want to know
21 what California City is able to provide.

22 MR BEVINS: What we provided in the
23 certification. That is our plan provision.
24 There are some minor changes. I mean a small
25 amount like 500 acre feet really isn't

1 significant, I don't think, in any of the issues.

2 MS. GULESSERIAN: How long would it take
3 to reach the maximum amount that you're going to
4 supply?

5 MR BEVINS: May I ask you just one
6 question to make sure, because Eric just brought
7 up a suggestion. I'm thinking broad scale; I'm
8 not thinking on a daily basis.

9 MS. GULESSERIAN: I was just going to
10 ask you. A point made here is what's the rate?
11 You can deliver 500 acre feet per how often?

12 MR BEVINS: Well, that would be probably
13 in a six-month period of time over the winter. If
14 that were the timing, the way things worked out.

15 Our current discharge permit would allow
16 that, I believe.

17 MS. GULESSERIAN: Thank you. And how
18 long would it take to reach the maximum amount
19 that you would be able to provide?

20 MR BEVINS: I believe it's five years.

21 MS. GULESSERIAN: How long is
22 construction of your upgrades to your facility
23 going to take?

24 MR BEVINS: To the wastewater plant?

25 MS. GULESSERIAN: Um-hum.

1 MR BEVINS: Or to the piping?

2 MS. GULESSERIAN: To the wastewater
3 plant.

4 MR BEVINS: The wastewater plant will
5 take us about 18 months.

6 MS. GULESSERIAN: Eighteen months. Will
7 you be doing the upgrades to the plant
8 concurrently with the construction of the
9 pipeline?

10 MR BEVINS: I would think that that
11 could happen.

12 MS. GULESSERIAN: So within 18 month the
13 constructions to the treatment plant and the
14 pipeline could be done?

15 MR BEVINS: Right. Well, remember,
16 there's actually two pipelines. You got the sewer
17 system and the pipeline. The pipeline, you asked
18 earlier about the critical path element. The
19 pipeline is not the critical path element. The
20 critical path element here is, the number one is
21 the upgrade of the wastewater treatment plant,
22 followed by the expansion of the sewer system.
23 Those are the two critical path elements.

24 MS. GULESSERIAN: Thank you for
25 clarifying that. And how long will that take, the

1 expansion of the sewer system?

2 MR BEVINS: That's the part that takes
3 roughly three years.

4 MS. GULESSERIAN: Okay.

5 MR BEVINS: Actually, we have it broken
6 down into five phases, which is why you come up
7 with five years total plan. And we would start
8 that simultaneous with everything else.

9 HEARING OFFICER CELLI: It's now 1:25;
10 I'm going to ask --

11 MS. GULESSERIAN: And how long will it
12 -- sorry.

13 HEARING OFFICER CELLI: -- that we move
14 on.

15 MS. GULESSERIAN: Okay. Just another
16 question, one more question. What was it? How
17 long will it take? He answered that. Is it
18 correct that -- how long will it take to construct
19 the delivery pipeline to Beacon?

20 MR BEVINS: That would happen, I would
21 think, relatively soon. I can't imagine that
22 being longer than a year. It's the least, it's
23 the least of the elements.

24 MS. GULESSERIAN: Okay. Are you going
25 to proceed with -- you said you're going to

1 proceed with the upgrades whether or not Beacon --

2 MR. BEVINS: We are going to proceed
3 with the wastewater treatment upgrades consistent
4 with our prior dialogue with Lahontan.

5 MS. GULESSERIAN: Okay.

6 MR. BEVINS: And we already have an RFP
7 out right now soliciting the upgrade feasibility
8 so we can begin the, all processes with that.

9 MS. GULESSERIAN: Okay, and if Beacon
10 does not use that water what will be the purpose
11 of that, what will you use that water for?

12 MR. BEVINS: I really want to tell you
13 I'm going to pour it on the ground. We're going
14 to use it for irrigation inside the city if it's
15 not used by Beacon.

16 MS. GULESSERIAN: Do you have a date for
17 the California City collection system construction
18 year?

19 MR. BEVINS: That's dependent --

20 MS. GULESSERIAN: Start date?

21 MR. BEVINS: That's totally dependent on
22 the whole process and the signing of an agreement
23 with Beacon.

24 MS. GULESSERIAN: Okay, once the
25 applicant decides how long will it take for you to

1 start construction?

2 MR BEVINS: It will probably take us
3 about -- by construction are you meaning shovel in
4 the ground or you're talking about the engineering
5 process and starting to move forward with that?

6 MS. GULESSERIAN: The process that you
7 previously described would take.

8 MR BEVINS: The process we previously
9 described would take about five years -- will take
10 five years to complete. It will probably take us
11 about four months to start.

12 HEARING OFFICER CELLI: Is that --

13 MS. GULESSERIAN: Thank you very much.
14 I have no further questions.

15 HEARING OFFICER CELLI: Thank you.
16 Applicant, any questions of these witnesses?

17 MS. LUCKHARDT: No further questions.

18 HEARING OFFICER CELLI: Redirect?

19 MR. BABULA: Nothing.

20 HEARING OFFICER CELLI: Thank you.
21 Thank you both for your testimony today.

22 It's now 1:30. We have about five
23 minutes to go before we get off of water. What
24 else do we need to do in order to get to complete
25 the record in water? Applicant?

1 MS. LUCKHARDT: We're still waiting for
2 Duane McCloud, who is en route.

3 HEARING OFFICER CELLI: Marlee, okay.
4 Have you heard from him? Do you know where he is?

5 MS. LUCKHARDT: I was just asking the --
6 we just tried to call him and he's not answering,
7 so he must be in a cell point where it's not
8 receiving.

9 HEARING OFFICER CELLI: Is he in a plane
10 right now, or is he on the road or something?

11 MS. LUCKHARDT: No, he's on the road.

12 HEARING OFFICER CELLI: Okay.

13 MS. LUCKHARDT: We know he's landed;
14 we've talked to him. He's en route.

15 HEARING OFFICER CELLI: Well, then,
16 Ms. Gulesserian, your only -- you have no further
17 witnesses at this point. You just wanted to ask
18 about five minutes of Mr. McCloud. What about
19 staff on water?

20 MR. BABULA: I'm done with water.

21 HEARING OFFICER CELLI: You're done with
22 water, okay. Now, this might be our opportunity
23 to, you wanted to insert TSE, transmission system
24 engineering --

25 MS. LUCKHARDT: We need Duane McCloud to

1 do that.

2 HEARING OFFICER CELLI: Oh, that's
3 right. Well, what is it that -- what are we going
4 to do with the transmission systems engineering?
5 You're just calling Duane McCloud, or do you have
6 your own witness on that?

7 MS. GULESSERIAN: I have my witness to
8 call.

9 HEARING OFFICER CELLI: And who would
10 that be? Mr. Marcus?

11 MS. GULESSERIAN: Mr. Marcus is ready
12 and available. And I have --

13 MS. LUCKHARDT: Do we want to finish
14 visual?

15 MR. BABULA: All right.

16 HEARING OFFICER CELLI: What happened
17 with visual?

18 MR. BABULA: Mark's here. We could
19 do --

20 HEARING OFFICER CELLI: Let's finish
21 visual.

22 (Laughter.)

23 HEARING OFFICER CELLI: Welcome. Mr.
24 Hamblin, if you could come on over, stand up,
25 raise your hand and be sworn.

1 Whereupon,

2 MARK HAMBLIN

3 was called as a witness herein, and after first
4 having been duly sworn, was examined and testified
5 as follows:

6 HEARING OFFICER CELLI: Please state and
7 spell your name for the record.

8 MR. HAMBLIN: Mark, M-a-r-k, Hamblin,
9 H-a-m-b-l-i-n.

10 HEARING OFFICER CELLI: Thank you.
11 Staff, your witness. This is on the question of
12 visual, ladies and gentlemen. You'll recall we
13 had a nice little, a little slide show showing a
14 little trash here and there along the trails,
15 along the road.

16 Now we're going to talk about the visual
17 impacts. And this will, and this will finish up
18 the whole topic, will it not? Yes, okay.

19 I appreciate the parties' willingness to
20 be flexible in the order that we call witnesses.

21 (Pause.)

22 HEARING OFFICER CELLI: Are we ready to
23 go on visual?

24 MR. SPEAKER: Two seconds.

25 MR. BABULA: Jane, do you happen to have

1 the PowerPoint, so we could put up the one --

2 MS. LUCKHARDT: Mine?

3 MR. HAMBLIN: Yeah, so I can figure out
4 what went on.

5 MS. LUCKHARDT: My witness and AV
6 operator over there.

7 HEARING OFFICER CELLI: Now, with regard
8 to visual, at the prehearing conference we did
9 talk about a need to put in any evidence for an
10 override if that's the direction the applicant
11 wants to go in.

12 MS. LUCKHARDT: That came in under the
13 executive summary testimony sponsored by Kenneth
14 Stein.

15 HEARING OFFICER CELLI: Okay.

16 MS. LUCKHARDT: So we had originally
17 designated it as executive summary testimony
18 because it was more of an overview of the whole
19 project, as opposed to focus just on visual.

20 HEARING OFFICER CELLI: I probably would
21 be wise to get you to state on the record what
22 that exhibit is so when it comes time to start
23 writing this we know.

24 MS. LUCKHARDT: And that exhibit is 322.

25 HEARING OFFICER CELLI: 322, thank you

1 very much.

2 MS. LUCKHARDT: It's the rebuttal
3 testimony of Kenneth Stein on overriding
4 considerations.

5 HEARING OFFICER CELLI: And that goes to
6 override; thank you very much.

7 MR. BABULA: We also have put in a
8 declaration from Terry O'Brien regarding --

9 HEARING OFFICER CELLI: I have that.
10 That was from staff.

11 MR. BABULA: Right.

12 MR. HAMBLIN: Okay, let me just kind of
13 lead off here. On both those KOPs there are two
14 questions on --

15 MS. LUCKHARDT: Should he be sworn in?

16 HEARING OFFICER CELLI: He has been
17 sworn but there's no question pending.

18 (Laughter.)

19 MR. BABULA: Can you put up the KOP-6,
20 which was --

21 MR. FLACK: As soon as I know which
22 one's KOP-6.

23 MS. LUCKHARDT: Can you --

24 MR. FLACK: I'll do my best --

25 HEARING OFFICER CELLI: I think it's

1 slide 23.

2 MR. FLACK: I think you're right.

3 HEARING OFFICER CELLI: And if we can
4 have this be an examination rather than a
5 narrative.

6 MR. BABULA: All right, --

7 MR. FLACK: Is that the one you guys
8 want?

9 MR. HAMBLIN: Go back to the one
10 previous. We'll go with the simulation.

11 MR. FLACK: Do you want that one first?

12 MR. HAMBLIN: Yeah, let's go with that
13 one.

14 MR. BABULA: All right, let me start.
15 Okay, we are ready.

16 HEARING OFFICER CELLI: We're on the
17 record. Let's move on to visual here.

18 MR. BABULA: Okay, thank you. This is
19 visual resources.

20 DIRECT EXAMINATION

21 BY MR. BABULA:

22 Q Have you had a chance to review the
23 applicant's rebuttal testimony and testimony
24 regarding visual resources?

25 A I have.

1 Q Okay. And I know you weren't present
2 here earlier when they went, but you've seen the
3 testimony. Do you have any response to the
4 applicant's, their position that the visual
5 impacts are not significant and that they're not
6 mitigable?

7 A Let me explain. The physical
8 environment that was described, yes, that could be
9 -- I'm not going to dispute that.

10 But there's a context in which staff
11 works within, and this is visual resources diagram
12 1 in the FSA. We have a whole listing of
13 categories that we go through.

14 Now, to merely see certain trash or
15 debris doesn't, you know, we're looking at a
16 bigger picture issue, such as items like visual
17 quality, viewer concern, visibility, number of
18 viewers, duration of view. Then we get into
19 contrast, dominance, view blockage.

20 It's not just limited to one particular,
21 I mean a focus shot. I'm not going to dispute
22 that it's not out there, that there is debris. It
23 is an OHV area. There's also some other debris,
24 I've also identified the fact that the ranch is a
25 deteriorating facility, as well.

1 But one of the concerns that came --
2 that I've had to look at in the wake of all of
3 these new solar facilities, and this is new stuff
4 that we're dealing with and having to contemplate,
5 is when I come under the category of contrast.

6 Now in the back of the FSA you'll see an
7 explanation of the various terms that I've used,
8 that's the final staff assessment, this document.

9 And we've worked with this over a number of years
10 to establish these definitions. Of course,
11 largely they were based on natural gas facilities,
12 and now we're introducing having to see new things
13 introduced over the solar facilities.

14 And one of them under contrast is
15 brightness. Now, when I'm talking about
16 brightness to the area, and this is why I've
17 identified under -- I highlighted the parabolic
18 trough. I made the statement, the glittering from
19 the parabolic troughs would be seen at various
20 locations. The degree of contrast introduced by
21 the amount of light or brightness that is given
22 off from the surface of the parabolic trough would
23 accentuate the contrast in the surrounding
24 landscape.

25 This is a new area, frankly, is

1 increased brightness to a specific area. And I'm
2 giving it a whirlwind of a name calling it ambient
3 brightness intensity.

4 And what I would look -- kind of reckon
5 it to is I was with my -- babysitting my friend's
6 daughter a number of months ago. And the light
7 bulb in her bedroom went out. There was a 20-watt
8 lightbulb in there. And this is during the
9 daytime, we were reading, or I was reading to her.

10 We went in, could not find another 20-
11 watt bulb, but we found a 120-watt bulb. And so I
12 went in and replaced the 20-watt bulb with the
13 120-watt bulb in the bedroom. And we turned it on
14 and she says, oh, my god, it's too bright.

15 So I started thinking about it. The
16 analogy would be think of the Fremont Valley as
17 being the bedroom. Think of the proposed power
18 plant being the 120-watt bulb that's currently
19 going in there. And that increase in intensity of
20 light, a brightness, I want to say not light, but
21 brightness.

22 Now, is there an impact there? Well,
23 under CEQA, yeah, there's some type of impact. Is
24 it significant? I don't know. We don't have
25 studies that can tell me what the ambient light is

1 for an area that might make it significant, non-
2 significant, it's an unknown to me at this point.

3 So, and there's other stuff coming on
4 solar fields, folks. I'm getting deluged with it
5 every day.

6 But anyway, so this is an unknown that I
7 had to kind of think about when I was considering
8 those two KOPs. What is this introduction? Is
9 this so bright? It is a physical change, but is
10 it so bright that it's a significant impact? At
11 least from the context of contrast under those
12 seven or eight categories.

13 Q So your professional opinion is based on
14 what, the state of what we know now and the
15 information is that it is a significant impact on
16 contrast?

17 A I have to say it's a significant impact
18 because there's no information to dismiss it, that
19 there may be an impact. And CEQA requires us to
20 err on the side of being most environmentally
21 protective, conservative.

22 HEARING OFFICER CELLI: Anything
23 further?

24 MR. BABULA: Okay, I am done.

25 HEARING OFFICER CELLI: Applicant

1 questions, please.

2 CROSS-EXAMINATION

3 BY MS. LUCKHARDT:

4 Q I've just got to ask, did you hike to
5 KOP-6, I think it is?

6 A No, I didn't. Unfortunately, I've got
7 one hip that's been replaced, and the other one's
8 going pretty quick. So my technical climbing,
9 even simple hiking -- and this is only a class 1
10 hike -- at the time limited, well, limits me from
11 how far up I can go.

12 Q Is a class 1 hike a fairly simple hike?

13 A Very simple.

14 Q Is that the hike that is described to go
15 to the top of Chuckwalla Mountain?

16 A I did describe the -- yeah, yeah,
17 actually the first one. These are based on some
18 of the trails from the -- actually, the map that's
19 in the FSA is based on the BLM's mapping, which is
20 their area of critical environmental concern
21 trails map.

22 It would be Jawbone. It's actually only
23 a portion of it. We didn't put the entire map in.

24 Q Do you think it could be the case that
25 the trail that you're describing there is the

1 trail to Chuckwalla Mountain and not the trail to
2 KOP-6?

3 A That could be the case.

4 Q The figures that, looking at some of the
5 figures in the FSA, you included a figure, I think
6 it's number 23, that shows, I believe it's
7 pictures from Chuckwalla Mountain?

8 A Correct. I believe those are the ones
9 from the Sierra Club?

10 Q Correct. And can you see Cone Lake in
11 one of those? You probably need to look at the
12 FSA.

13 HEARING OFFICER CELLI: And if you have
14 the picture, you might want to walk over and show
15 it to him, so he'll have the proper --

16 MS. LUCKHARDT: It's figure 23, the east
17 view -- does somebody have it in color? Okay,
18 Sara has it in color in case.

19 THE WITNESS: I have it, yeah.

20 HEARING OFFICER CELLI: Do you remember
21 what the question was, Mr. Hamblin?

22 THE WITNESS: Can I see Calm Lake.

23 MR. SPEAKER: Cone Lake.

24 THE WITNESS: Or Cone Lake, yes, I can.

25 BY MS. LUCKHARDT:

1 Q And isn't the color of Cone Lake similar
2 to the color from the solar array?

3 A In the --

4 Q In vis-

5 A In vis-, it's a simulation.

6 Q The simulation.

7 A Okay, as in --

8 Q From say KOP-6?

9 A We can go back to 6 --

10 MR. SPEAKER: Which one is --

11 THE WITNESS: Let's go KOP-6.

12 MR. BABULA: 23?

13 (Pause.)

14 THE WITNESS: Okay, that's the existing
15 that was taken.

16 MR. FLACK: Do you want the next one?

17 MS. LUCKHARDT: Yeah. There we go.

18 THE WITNESS: And that is at some time
19 during the day.

20 BY MS. LUCKHARDT:

21 Q Correct. And isn't it the case that the
22 time at which you're going to see that particular
23 reflection will be limited?

24 A It will shift during the day, as we've
25 indicated. Actually, even as your consultant

1 indicated. That there will be a substantial
2 contrast at certain points during the day, and
3 then it will diminish and change as the movement
4 of the sun occurs, and the tracking occurs.

5 Q And it's correct that the backs of this
6 particular array field will be painted a sand
7 color, that's correct?

8 A That's, from what I understand, and that
9 follows with what was done also at Harper Lake.

10 Q When you were doing your analysis in the
11 FSA and you were evaluating KOP-6, you also stated
12 that the view includes manmade modifications,
13 didn't you?

14 A Correct.

15 Q And those would include the Honda Test
16 Track, --

17 A The existing deteriorating structures,
18 the ranch; pole lines; the street; the highway.

19 Q And don't these features diminish at
20 least the natural perception of that view?

21 A Those would get considered under -- if
22 we go back to diagram 1, under the visual
23 sensitivity, we would take those into
24 consideration, yes.

25 Now, what we're not, or at least the

1 framing of your questioning is not taking in the
2 bottom part proposed condition. The proposed
3 condition introduces the lighting issue, the
4 brightness issue that I mentioned.

5 That has to be equated along with the
6 proposed structures that you're --

7 Q And did you take into account the
8 existing contrast that's out there now for this
9 site?

10 A Yes. Yes, thanks to the previous
11 picture, and the fact that I was also out there.
12 I just didn't make it up -- I made it to all the
13 other KOPs, I just didn't climb.

14 If we notice the different texture,
15 even, the difference in the soil change, even the
16 background, those were considered.

17 (Pause.)

18 BY MS. LUCKHARDT:

19 Q Do you consider any contrast to be an
20 adverse impact?

21 A Any, wow, any contrast. Well, let's go
22 back to the back of the document, I explain what
23 contrast is. And I'm not going to say any because
24 there's also the ability in which if structures
25 are more uniform to the -- well, here, let's, let

1 me go back and find one of those. Actually I have
2 it here.

3 HEARING OFFICER CELLI: How many more
4 questions do you have, Ms. Luckhardt?

5 MS. LUCKHARDT: Just a couple more.

6 HEARING OFFICER CELLI: Okay. The clock
7 is running.

8 MR. BABULA: He's actually looking at
9 the FSA.

10 (Pause.)

11 HEARING OFFICER CELLI: So the question
12 has to do with contrast, what is contrast --

13 THE WITNESS: Okay.

14 HEARING OFFICER CELLI: -- any contrast
15 constitutes a significant impact.

16 THE WITNESS: Well, contrast concerns
17 the degree to which the proposed project's visual
18 characteristics or elements of form, line, color
19 and texture differ from form, line, color and
20 texture existing in the landscape.

21 So if there is a similarity between the
22 design of the project with the form, line, texture
23 within the natural environment, it would be
24 limited contrast.

25 So I wouldn't be -- there would be some

1 contrast, but I wouldn't say it would be a
2 significant -- I couldn't just rule that it's
3 automatically an impact. A substantial impact.
4 Or substantial degrading, let me say it that way.

5 HEARING OFFICER CELLI: You might want
6 to move those metal things.

7 THE WITNESS: Clips, yes.

8 HEARING OFFICER CELLI: Those clips away
9 from that mic, please. It might help. So, I'm
10 sorry, your answer got interrupted and we're
11 interested in that answer. You said that if
12 there's low contrast then there's no impact. And
13 if there's high --

14 THE WITNESS: What you're -- all right,
15 what you're looking at is the ability of the new
16 elements being introduced to be absorbed within
17 the landscape.

18 Now, if you have extensive introduction
19 of forms, lines, colors and textures that are not
20 in, let's say, rhythm or consistent with the
21 physical condition, then you're going to have a
22 significant contrast.

23 HEARING OFFICER CELLI: Now, is --

24 THE WITNESS: So now what you'd like to
25 see is maybe facilities designed that flow as best

1 as they can with the existing physical condition.

2 HEARING OFFICER CELLI: So, if I may,
3 and I'll let the parties cross on this if they
4 need to, but instead of mirrors being introduced
5 there was a lake introduced there.

6 THE WITNESS: Okay.

7 HEARING OFFICER CELLI: A lake
8 presumably has a similar impact to these mirrors
9 in that it's going to reflect sunlight, it's going
10 to reflect the sky, it's going to be blue density,
11 mostly yellowish --

12 THE WITNESS: Correct.

13 HEARING OFFICER CELLI: -- background.

14 THE WITNESS: A change in the existing
15 physical condition.

16 HEARING OFFICER CELLI: Right.

17 THE WITNESS: Introduced by something
18 other than structure.

19 HEARING OFFICER CELLI: And it's an
20 impact. It's a significant impact under those
21 criteria. The question is it a significant
22 adverse impact.

23 My question is does that constitute a
24 significant adverse impact?

25 THE WITNESS: Well, the question could

1 be contingent on size. We have a two-square-mile
2 industrial facility. Is that a significant impact
3 for the Fremont Valley of light reflected,
4 brightness?

5 HEARING OFFICER CELLI: So size is a
6 factor?

7 THE WITNESS: Size could be a factor.

8 HEARING OFFICER CELLI: But I'm --

9 THE WITNESS: Now, but let me go back
10 also and say what I was saying, too. We have this
11 increased brightness occurring. When does that
12 become a significant impact? And I don't have
13 data on that.

14 HEARING OFFICER CELLI: Okay. I mean it
15 seems to me that when you're driving down the 14
16 and you get blasted and you can't see because the
17 sun is now in your face --

18 THE WITNESS: True.

19 HEARING OFFICER CELLI: -- like a
20 mirror, that would be significant. And that would
21 be adverse.

22 THE WITNESS: True.

23 HEARING OFFICER CELLI: Okay.

24 THE WITNESS: And I've been in a plane
25 flying over a couple of lakes where I've seen the

1 light come up at me.

2 HEARING OFFICER CELLI: So this is
3 admittedly kind of a new area.

4 THE WITNESS: Yes.

5 HEARING OFFICER CELLI: And you had sort
6 of indicated earlier in your testimony, you said
7 something to the effect of you can't state whether
8 this is a significant impact, but you have no
9 evidence to dispute that brightness, the
10 brightness factor is significant.

11 THE WITNESS: I don't have a scientific
12 level that says, okay, we're now 50 percent
13 increase in the current area where this project is
14 going to be an increase in brightness. Therefore,
15 it's an impact.

16 Now I'm going to conclude there is an
17 effect that's occurring. That's why I'm here
18 today to say that.

19 Now, if somebody were to ask well, at
20 what point, what percentage, what candle power,
21 what lumen, I can't tell you at this time.

22 Now, Madam Chair, you'll be seeing me
23 probably later in the summer, because we are
24 looking at doing some in-depth studying on this.
25 Just a footnote.

1 HEARING OFFICER CELLI: But when it
2 comes to this Committee's going to have to resolve
3 this problem of unmitigable impact based upon this
4 KOP, these two KOPs.

5 THE WITNESS: Right.

6 HEARING OFFICER CELLI: And no pun
7 intended, but any light you could shed --

8 (Laughter.)

9 HEARING OFFICER CELLI: -- would be
10 useful.

11 THE WITNESS: Well, this goes back to a
12 meeting which Madam Chair was present for where
13 there was a gentleman in the back of the room that
14 said something about a shot in the dark. I was
15 the guy that said that. We're taking some shots
16 in the dark within our professional expertise.
17 And this was one of those thought processes that I
18 was undergoing, and continue to undergo during the
19 course of this.

20 We would have an effect -- we have an
21 effect occurring. We have a change in the
22 existing condition. I have to err on the side of
23 advising you that I think it's a significant
24 impact because I don't have any information that
25 will allow me to say it's not an impact.

1 HEARING OFFICER CELLI: Okay.

2 THE WITNESS: I can't just sit there,
3 and then knowing that I need to err on the side of
4 being more environmentally protective. Now the
5 analogy you even just mentioned, we start getting
6 into another category, which is the glint and
7 glare, the traffic safety issue. And that's
8 another kind of subset that we'd be dealing with
9 at some point, as well.

10 Retina damage. Do we go to that extreme
11 or do we go to a flash blindness situation.
12 Again, these are all areas which we're looking at
13 at our end, at the technical staff's end.

14 But we don't have anything definitive to
15 give you at this time.

16 HEARING OFFICER CELLI: Okay, fair
17 enough. I'll give it back to you, Ms. Luckhardt,
18 you may follow up.

19 BY MS. LUCKHARDT:

20 Q Mr. Hamblin, based on your analysis --

21 MS. LUCKHARDT: Am I cross-examining the
22 Committee?

23 HEARING OFFICER CELLI: This is cross.

24 (Laughter.)

25 HEARING OFFICER CELLI: Mr. Hamblin,

1 you're being asked a question on cross.

2 BY MS. LUCKHARDT:

3 Q Mr. Hamblin, based on what you just
4 discussed, would you find the existing condition,
5 which clearly delineates the previous agricultural
6 activity to be a significant impact?

7 A Well, say that again? I'm not --

8 Q Would you find the existing condition,
9 and maybe go to the previous slide --

10 A Actually the impact isn't based on the
11 significance. The change to the existing
12 condition.

13 Q Hypothetically, if it was --

14 A Pristine desert?

15 Q Pristine desert, and then you looked at
16 the existing condition, would that be potentially
17 a significant adverse impact?

18 A It would be a concern, yes. I would say
19 that there's definitely a physical effect that has
20 happened. From pristine, if we're looking at like
21 a wilderness classification by the U.S. Fish and
22 Wildlife Service? Wilderness scenic, something in
23 those areas, to going to, well, going to this,
24 yeah, there's an impact.

25 Q And then isn't the overall geometric

1 shape of the project similar to what's out there
2 now?

3 A Well, okay. You're introducing
4 structures, as well, that aren't out there.
5 Administration building, mirrors that aren't out
6 there. You know, this is a roadway system. I
7 mean I would say some, at least at this angle
8 there's some form that's added to it. But I think
9 I say that even in the staff report, there's a
10 comment I make, that some people may think this is
11 visually pleasing.

12 MS. LUCKHARDT: Okay. I have nothing
13 further.

14 HEARING OFFICER CELLI: Nothing further?

15 Ms. Gulesserian, I know that you didn't have a
16 dog in this fight but did you want to ask any
17 questions?

18 MS. GULESSERIAN: No, we have no
19 questions, thank you.

20 HEARING OFFICER CELLI: Thank you.
21 Redirect please, Mr. Babula?

22 (Pause.)

23 MR. BABULA: Just one clarifying
24 question to redirect him on.

25 //

1 REDIRECT EXAMINATION

2 BY MR. BABULA:

3 Q Was there -- besides the brightness
4 component, was there another component of KOP-6
5 that you had put in your testimony that you'd like
6 to address?

7 A Sure. We focused a lot of this
8 discussion on brightness, but again, it's
9 structures that are also being introduced into an
10 area that doesn't currently have them. And,
11 again, at this type and design, you know, two
12 square miles of them.

13 So I do want to add, you know, I mean my
14 future concern also becomes this brightness issue,
15 because I'm looking technically, but there's also
16 still, and I've already discussed the structure
17 issue. So I won't belabor the point.

18 HEARING OFFICER CELLI: Chairman
19 Douglas, you had a question.

20 PRESIDING MEMBER DOUGLAS: Mr. Hamblin,
21 a brief question. There doesn't seem to be any
22 dispute that there will be a change to the
23 physical environment, and that it will be visible
24 certainly under certain circumstances maybe more
25 than others.

1 I wanted to ask you directly what is it
2 that makes it adverse? Is the brightness, is it
3 something else?

4 THE WITNESS: Well, at this elevated
5 angle I'm going to say brightness. If you --
6 also, again, it's structures introduced to an area
7 that -- significant types of structures for a long
8 distance.

9 If this had been a natural gas-fired
10 facility, my view would be a lot different because
11 it would have been on a smaller footprint. But
12 I'm also considering the fact that we've got a
13 large area of mirrors, administration building, et
14 cetera, spread out over a large, well, field of
15 view.

16 PRESIDING MEMBER DOUGLAS: So you're
17 looking at the size of the facility, you're
18 looking at brightness, and you're looking at
19 structures.

20 THE WITNESS: I'm looking at all of the
21 items that were in diagram 1.

22 PRESIDING MEMBER DOUGLAS: Now, this is,
23 as has been noted to some degree, an issue of
24 first impression here at the Commission. We don't
25 have a lot of cases that have been decided on the

1 visual impacts of large solar facilities.

2 THE WITNESS: I'm well aware of that.

3 PRESIDING MEMBER DOUGLAS: We're moving
4 towards having a number, hopefully. You mentioned
5 that in your mind there's no set or understood
6 criteria for assessing the significance of the
7 visual impact. And I wanted to ask you --

8 THE WITNESS: I did say that.

9 PRESIDING MEMBER DOUGLAS: -- to break
10 that down a little bit. There's brightness,
11 there's structures, there's size of the facility.

12 THE WITNESS: Okay, my question was
13 based, at that point, on the brightness issue.
14 This is something that I haven't been able, again,
15 to grab my hands around. And we, upstairs on the
16 fourth floor, have been talking about and we're
17 seeing some of these issues, also, with the power
18 towers.

19 All I can say is we're working through
20 it. We have an illumination engineer, an
21 illumination specialist on board. He has offered
22 some tremendous advice and counsel to us on this
23 matter.

24 There is just this point that, at least
25 when this report was done back in September, I

1 know more now than what I did then. And I kind of
2 have an idea of where we maybe go, some idea of
3 where we may be going.

4 But, yes, the component of structures is
5 also. I just didn't dwell on the structures as
6 much as I did on the brightness.

7 PRESIDING MEMBER DOUGLAS: And in terms
8 of the brightness, for our benefit and for the
9 benefit of any members of the public who may be
10 here, can you describe it or compare it to any
11 reference point?

12 THE WITNESS: Reference point?

13 PRESIDING MEMBER DOUGLAS: That might
14 be --

15 THE WITNESS: Like incident ray or
16 refractive ray or escaped ray?

17 PRESIDING MEMBER DOUGLAS: How bright.

18 THE WITNESS: How bright. No, actually
19 I don't have anything. See, that's part of going
20 from the 20-watt bulb to the 120, it was purely an
21 analogy. I don't know if that is actually the
22 example that I would -- that's an analogy. I
23 don't know if that's the scientific percentage of
24 increase that would take place.

25 PRESIDING MEMBER DOUGLAS: All right,

1 thank you.

2 HEARING OFFICER CELLI: Okay, I think
3 that -- are we finished with visual then?

4 MS. LUCKHARDT: Well, I'm just -- if I
5 could just, based on the discussion that you just
6 had about what other factors besides brightness
7 were taken into account for these KOPs.

8 RE CROSS EXAMINATION

9 BY MS. LUCKHARDT:

10 Q It was my understanding that you created
11 an estimate of the number of hikers that you
12 thought might go up that trail?

13 A Correct.

14 Q Was that based on any numbers that you
15 could get from BLM or from anyone else?

16 A BLM didn't have a count. They made an
17 assumption. So I went with a number that -- that
18 was purely a number that I put forth. Now the
19 number of hikers that I used was also considered
20 low by the diagram 7 -- diagram 1 categories.

21 So, yeah, the number wasn't so much.
22 Now granted, hikers tend to be more passive
23 recreation. They tend to be more observant.
24 Increased brightness, the structures, the view may
25 impact them much more than if you went down the

1 mountain to the OHV area, the offroad riders who
2 tend to be more active recreationists. And they
3 not care; they're going to be worried about what's
4 in front of them, jumping, that type of activity.

5 Or worrying about the hole in front of them which
6 I missed when I was doing it.

7 MS. LUCKHARDT: I have nothing further.

8 HEARING OFFICER CELLI: Anything
9 further, staff?

10 MR. BABULA: Nothing further.

11 HEARING OFFICER CELLI: Thank you. With
12 that, we finish visual then.

13 Let me see, now we were in the midst.

14 MS. LUCKHARDT: Do you want to complete
15 water?

16 HEARING OFFICER CELLI: Yes. We were in
17 the midst of water --

18 MS. LUCKHARDT: We can bring up Mr.
19 McCloud.

20 HEARING OFFICER CELLI: Do you have him
21 here? Oh, good.

22 MS. LUCKHARDT: He's here.

23 HEARING OFFICER CELLI: Thank you,
24 Mr. McCloud. So where are we now? Let me see.

25 MS. LUCKHARDT: He needs to be sworn.

1 And then actually I'm concerned about us getting
2 to biology because we do not have all of the folks
3 here any longer than today.

4 HEARING OFFICER CELLI: Well, we're
5 going to get to it. And we will finish today, so,
6 with that, let's have Mr. McCloud sworn.

7 MS. GULESSERIAN: I'm going to make a
8 suggestion that since both Mr. McCloud and David
9 are transmission system engineering, we could get
10 them done in like ten minutes, five minutes.

11 HEARING OFFICER CELLI: I think that's a
12 fine suggestion. Let's get Mr. McCloud sworn.
13 Whereupon,

14 DUANE McCLOUD
15 was called as a witness herein, and after first
16 having been duly sworn, was examined and testified
17 as follows:

18 MS. LUCKHARDT: Yeah, I'd like just to
19 swear in Mr. Flack just in case.

20 MS. GULESSERIAN: I actually narrowed
21 down my questions so it shouldn't take too long.

22 MS. LUCKHARDT: Okay.
23 Whereupon,

24 MICHAEL FLACK
25 was called as a witness herein, and after first

1 having been duly sworn, was examined and testified
2 as follows:

3 HEARING OFFICER CELLI: Please state
4 your name and spell it for the record. And if
5 we're going to have a panel then I am going to
6 need both of them to state their name and spell it
7 for the record.

8 MR. McCLOUD: Duane McCloud, D-u-a-n-e
9 M-c-C-l-o-u-d.

10 MR. BUSA: Depending on the questions,
11 this is Scott Busa, B-u-s-a.
12 Whereupon,

13 SCOTT BUSA
14 was recalled as a witness herein, and having been
15 previously duly sworn, was examined and testified
16 as follows:

17 MR. FLACK: Michael Flack, F-l-a-c-k.

18 CROSS-EXAMINATION

19 BY MS. GULESSERIAN:

20 Q Duane, I'll ask you since you came all
21 this way. But apologies, you didn't have the
22 benefit of hearing the earlier testimony of
23 Rosamond.

24 We heard this morning that, or this
25 afternoon, that the Rosamond Community Services

1 District, from that representative, that it was
2 going to take two years to upgrade the plant and
3 build the pipeline from the time that they have an
4 agreement with Beacon.

5 Is it correct that construction of the
6 Beacon project will take approximately 25 months?

7 MR. McCLOUD: That is correct.

8 MS. GULESSERIAN: So, are you familiar
9 with soil and water condition 1.

10 HEARING OFFICER CELLI: And I'm going to
11 need each of your witnesses to state who they are
12 before they speak so the record's clear which
13 witness is speaking.

14 MR. McCLOUD: Yes. This is McCloud.
15 And I'm familiar with the condition, although I
16 may need to refresh specific parts --

17 MS. GULESSERIAN: Oh, sure, I just have
18 one question about it. It's that Rosamond will
19 take two years to construct the plant and
20 pipeline, and it's going to take two years for the
21 plant, the Beacon plant, to be constructed.

22 So in order to comply with condition 1
23 don't you have to make a decision on whether to
24 use Rosamond recycled water within one to two
25 months after the start of construction?

1 MR. McCLOUD: That would be reasonable,
2 yes. That would be one of the first decisions
3 we'd have to make.

4 MS. GULESSERIAN: Okay, thank you.

5 HEARING OFFICER CELLI: Any further
6 questioning from CURE?

7 MS. GULESSERIAN: We have no further
8 questions.

9 HEARING OFFICER CELLI: Staff?

10 MR. BABULA: Nothing.

11 HEARING OFFICER CELLI: Applicant?

12 MS. LUCKHARDT: Nothing.

13 HEARING OFFICER CELLI: Thank you. Does
14 this mean that we are finished with water, soils
15 and water and hydrology at this time? Applicant?

16 MS. LUCKHARDT: I believe so.

17 HEARING OFFICER CELLI: CURE, nothing
18 further on soils, water and hydrology?

19 MS. GULESSERIAN: Nothing further.

20 HEARING OFFICER CELLI: Staff?

21 MR. BABULA: Nothing further.

22 HEARING OFFICER CELLI: Thank you. So
23 that record's closed.

24 Now, let me just go back to my outline
25 and see where we are. So we have handled -- now

1 alternatives, we've received all of the evidence
2 on alternatives in written form from CURE,
3 applicant and staff. And we aren't calling any
4 witnesses.

5 Bio we're going to call next. Cultural,
6 we're finished with. Soil and water we're
7 finished with. And visual we're finished with.

8 The only things remaining is the hazmat,
9 waste. There were some questions on project
10 description.

11 And then there's transmission systems
12 engineering. And is it that I need to take care
13 of transmission systems engineering now? How long
14 is that going to take, because we need to get to
15 bio.

16 MS. GULESSERIAN: Five --

17 HEARING OFFICER CELLI: We were going to
18 start with bio.

19 MS. GULESSERIAN: We have about five or
20 ten minutes, really, it's going to be quick.

21 HEARING OFFICER CELLI: Okay. Is that a
22 reasonable estimate, five to ten minutes on TSE?
23 Applicant?

24 MS. LUCKHARDT: I have a few questions
25 on, cross questions for CURE. But I'm not

1 remembering, off the top of my head, how many
2 there are.

3 HEARING OFFICER CELLI: Staff?

4 MR. BABULA: Yeah, I don't have any.
5 I'm trying to find out if Mark is on the line. Do
6 you know? Can you see?

7 HEARING OFFICER CELLI: Let me look.

8 MS. LUCKHARDT: In addition, if you've
9 got folks on the line, if you could open up the
10 line for Steve Richards, as well, that would be
11 great.

12 HEARING OFFICER CELLI: Okay.

13 MS. LUCKHARDT: If we're going to go to
14 transmission.

15 HEARING OFFICER CELLI: Steven Richards,
16 I just un-muted your line. Can you hear me?
17 Steven Richards, can you hear me?

18 MR. RICHARDS: Yes, I can. Yes, I can.

19 HEARING OFFICER CELLI: Okay. Give me a
20 minute, I need to put a mic closer to the phone so
21 that if you wouldn't mind saying your name again.
22 Mr. Richards?

23 MR. RICHARDS: Steven Richards.

24 HEARING OFFICER CELLI: Can you all hear
25 that okay? Okay. So, we have Steven Richards on

1 the line, thank you.

2 MS. LUCKHARDT: Why don't we have him
3 sworn while he's --

4 HEARING OFFICER CELLI: Just before I do
5 there was another -- who else did I need.

6 (Telephone interference.)

7 HEARING OFFICER CELLI: Okay, I've got
8 -- Mr. Richards, I think you have a gobbler that
9 needs --

10 (Laughter.)

11 HEARING OFFICER CELLI: -- management.
12 Okay. I'm going to open, ladies and gentlemen on
13 the phone, I want you to understand that I have
14 three or four callers here who are not identified,
15 because I think you called in without using the
16 internet and so you're not identified.

17 I'm going to open your line one at a
18 time, and ask you to speak. That means
19 everybody's going to speak, and I'm only going to
20 hear one of you, and then I'll know who's on the
21 line. So I hope that's clear.

22 I'm opening up the line right now to
23 call-in user number 1. I'm going to un-mute it.
24 And now, call-in user 1 -- or all callers on the
25 phone, please state your name.

1 Okay, nobody is calling on the phone.

2 Say again, please?

3 MR. RICHARDS: I'm not sure what caller
4 number I am, but this is Steve Richards.

5 HEARING OFFICER CELLI: Steve Richards,
6 okay. I've got you in there. That's good. But
7 caller user number 1, we don't know who that is.
8 I'm going to open up the line for caller user
9 number 10. And now, call-in user number 10, if
10 you're on the line, could you --

11 MR. HESTERS: Mark and Sudath are on the
12 line. I don't know whether that is 10 or not.

13 HEARING OFFICER CELLI: That's who I
14 need. So this is Mark Hesters?

15 MR. HESTERS: Mark Hesters.

16 MR. ARACHCHIGE: And Sudath Arachchige.

17 HEARING OFFICER CELLI: We'll have you
18 spell that in a minute.

19 So I now have those three, Mark, Sudath
20 and Steve Richards on the line. Do I need anyone
21 else from this particular topic?

22 MR. BABULA: Not from us.

23 HEARING OFFICER CELLI: Okay. So,
24 Steven and Sudath and Mark, we're going to have
25 you sworn in at this time.

1 You can just do it right on the phone.
2 They can hear you.

3 Whereupon,

4 STEVEN RICHARDS, MARK HESTERS

5 and SUDATH ARACHCHIGE

6 were called as witnesses herein, and after first
7 having been duly sworn, were examined and
8 testified as follows:

9 HEARING OFFICER CELLI: Thank you.

10 You're sworn. Whose section is this? Is this
11 CURE?

12 MS. GULESSERIAN: Yes.

13 HEARING OFFICER CELLI: Go ahead,
14 please, Ms. Gulesserian.

15 MS. GULESSERIAN: Thank you.

16 DIRECT EXAMINATION

17 BY MS. GULESSERIAN:

18 Q Mr. Marcus, can you state your name for
19 the record.

20 MR. MARCUS: David Marcus, M-a-r-c-u-s.

21 MS. GULESSERIAN: And are you sponsoring
22 your testimony that has already been entered into
23 the record, exhibit 616 through 624?

24 MR. MARCUS: Yes, I am.

25 MS. GULESSERIAN: Any changes to that

1 sworn testimony other than the ones made this
2 morning?

3 MR. MARCUS: No.

4 MS. GULESSERIAN: Are the opinions in
5 your testimony your own?

6 MR. MARCUS: Yes, they are.

7 MS. GULESSERIAN: Can you please
8 summarize your testimony and the basis for your
9 conclusions.

10 MR. MARCUS: Talking now about the
11 transmission engineering part of my testimony, I
12 first identified a discrepancy between the LADWP
13 description of the Barren Ridge Rinaldi Line in
14 the system impact study, which I believe is
15 exhibit 76, and the LADWP website describing the
16 Barren Ridge renewable transmission project. And
17 recommended that this should be clarified,
18 something which I think has since happened in an
19 email from staff late last week.

20 I then identified that even taking
21 exhibit 76 as accurate, it implies that in order
22 to deliver the full output of the Beacon project
23 onto the grid, there would be times when LADWP
24 generation from hydro plants would have to be
25 curtailed.

1 And recommended that rather than
2 licensing a project for 250 megawatts that would
3 not be producing a net contribution of 250
4 megawatts, the FSA condition TSE-5 should be
5 amended in three different ways.

6 First, that it should be amended to
7 require there be a signed larger generator
8 interconnection agreement prior to the start of
9 power plant construction. That would resolve any
10 question about have all the numbers properly
11 looked at.

12 Second, that the LGIA V1 that allows for
13 the full output of Beacon to be delivered to the
14 project under N-0 conditions. It's understood and
15 it's often been the case that under contingencies
16 there may be project curtailments. But you
17 shouldn't have a project being connected to the
18 system that under normal conditions could ever,
19 say at peak load, not be able to deliver its full
20 output.

21 And that third, even if LA was willing
22 to interconnect Beacon and accept Beacon's full
23 output, if the condition for doing that was that
24 LA would curtail its generation, that that
25 shouldn't be allowed either. That the system, as

1 a whole, if it's been promised 250 megawatts,
2 should be able to accept 250 megawatts under N-0
3 conditions.

4 That was my testimony.

5 MS. GULESSERIAN: Can you clarify just
6 for the record what you mean by N-0 conditions?

7 MR. MARCUS: Yes, N-0 is a term of art
8 used in transmission planning to refer to the
9 condition where all facilities are in service or
10 capable of being in service, not all power plants
11 run all the time. But every facility that you
12 want to run is either running or capable of
13 running.

14 And by contrast if any one facility not
15 specified in advance is assumed out of service,
16 that would be N-1. And then there's subdivisions.
17 if you're talking only about generators that would
18 be a G-1. If you're talking only about
19 transformers that would be T-1. N-1 is the
20 generic term for one facility out of service.

21 MS. GULESSERIAN: Thank you. Do you
22 have anything further to add?

23 MR. MARCUS: No, I do not.

24 MS. GULESSERIAN: Thank you.

25 HEARING OFFICER CELLI: Thank you.

1 Staff, please, cross.

2 CROSS-EXAMINATION

3 BY MR. BABULA:

4 Q How do you propose that we have a
5 condition that regulates what LADWP does?

6 MR. MARCUS: That the permit would say
7 that construction is conditional on obtaining an
8 LGIA with the following constraints on it. That
9 an LGIA that says you can connect but you can't
10 generate more than 50 megawatts would clearly be
11 unacceptable and no one's proposing that here.

12 But they are contemplating, based on the
13 SIS, a scenario where you would be interconnecting
14 250, but you wouldn't be able to deliver the full
15 250.

16 And then they're contemplating -- sorry,
17 based on the SIS they're contemplating a situation
18 where you could interconnect 250, but you could
19 only deliver the full 250 if 65 to 70 megawatts of
20 LA generation were curtailed to make room for it.

21 In the email from LA to the staff from
22 last Wednesday that was forwarded on to me at the
23 end of last week, that email contemplates a
24 condition where 250 megawatts would be allowed to
25 interconnect, but not all 250 megawatts would be

1 deliverable.

2 It's unclear right now from either the
3 SIS or the LADWP email, since neither of them is
4 an LGIA, whether those proposed constraints are
5 constraints under N-0 conditions or N-1
6 conditions.

7 What I'm saying is even if somebody is
8 willing to enter into an LGIA that allows
9 curtailments under N-0 conditions, the Commission,
10 as a matter of policy, shouldn't be licensing
11 power plants with those kind of conditions.
12 Because it means that California's not going to
13 get what it's paying for. It's not going to get
14 250 reliable megawatts if you can have N-0
15 curtailments.

16 MR. BABULA: But isn't that ultimately
17 how LADWP runs their grid? Or if something comes
18 up and they need to shift resources, that's up to
19 them? We don't really have jurisdiction on that?

20 MR. MARCUS: You have jurisdiction as to
21 what conditions you're willing to allow this plant
22 to be built under. And if you say an LGIA that
23 contemplates N-0 curtailments is not an LGIA that
24 is allowing full delivery of the project to the
25 grid, I believe you can do that.

1 MR. BABULA: Okay, well, I'll let our
2 technical people address the other issues that you
3 brought up. I have no further questions.

4 HEARING OFFICER CELLI: Thank you.
5 Applicant, cross?

6 MS. LUCKHARDT: Yes.

7 CROSS-EXAMINATION

8 BY MS. LUCKHARDT:

9 Q Mr. Marcus, where in the Energy
10 Commission regulations is the requirement that
11 you're stating stated?

12 MR. MARCUS: I'm not a lawyer and I
13 couldn't tell you.

14 MS. LUCKHARDT: Are you aware that it's
15 there anywhere? Are you aware that that's a legal
16 requirement?

17 MR. MARCUS: I am not aware whether it's
18 a legal requirement or not. My testimony, as a
19 matter of policy, is that the Commission shouldn't
20 want to accept projects that are not capable of
21 delivering their full output to the grid when the
22 grid is in operation.

23 N-1 is a totally different situation.
24 But under N-0 conditions it's not a real full
25 interconnection if it's subject to curtailment

1 under N-0 conditions.

2 MS. LUCKHARDT: Are you familiar with
3 special protection schemes or RAS schemes? Those
4 are remedial action schemes.

5 MR. MARCUS: Yes, I am. Special
6 protection schemes are SPSS and remedial action
7 schemes, RASS, are two names for the same kind of
8 thing.

9 MS. LUCKHARDT: And isn't it true that a
10 RAS or an SPS scheme is included in many many
11 interconnection agreements?

12 MR. MARCUS: Yes, it's quite common to
13 have a RAS or an SPS to deal with contingency
14 conditions, that is N-1 or N-2 conditions. I
15 don't believe it's common at all to have a RAS for
16 N-0 conditions.

17 MS. LUCKHARDT: And when you're looking
18 at the SIS, where does it say that a RAS or an RAS
19 scheme is required for N-0?

20 MR. MARCUS: I think there -- well,
21 first of all, nowhere does it say when it's
22 required, but the SAS is not the interconnection
23 agreement. It's simply a study of what might
24 happen were this project to be connected.

25 But there are references to a proposed

1 SPS on page 8 of exhibit 76.

2 MS. LUCKHARDT: And where on page 8?

3 MR. MARCUS: Under the category of
4 transient stability analysis at the top of the
5 page. It then describes cases that are going to
6 be studied; and items 6, 7, 8, 9, 10, 11, 12 and
7 13 all refer to with an SPS.

8 HEARING OFFICER CELLI: For the
9 record --

10 MR. MARCUS: And then under double
11 contingencies, those are all under the subcategory
12 of single contingencies --

13 HEARING OFFICER CELLI: Were are --

14 MS. LUCKHARDT: What are you looking at?

15 HEARING OFFICER CELLI: I want to know,
16 for the record, what exhibit we're in and --

17 MR. MARCUS: 76.

18 HEARING OFFICER CELLI: Exhibit 76,
19 thank you. Page 8 of exhibit 76?

20 MR. MARCUS: Apparently not.

21 MS. LUCKHARDT: No.

22 MR. MARCUS: Oh, it's page 8 of the
23 system impact study plan, which is, itself, which
24 is appendix A, follows page 20.

25 MS. LUCKHARDT: Isn't it true that the

1 study plan was prepared prior to the system impact
2 study, and that it's a document that's prepared
3 prior to the system impact study?

4 MR. MARCUS: Yes, and then becomes part
5 of it because it describes what was going to be
6 studied.

7 MS. LUCKHARDT: But it --

8 MR. MARCUS: In the system impact study,
9 itself, on page 19, there's a reference to a
10 proposed SPS.

11 MS. LUCKHARDT: Isn't that reference
12 referring to the N-1 and N-2 contingency
13 conditions?

14 MR. MARCUS: I don't see how you follow
15 that. It occurs in a sentence. It says, system
16 performance meets all the applicable NERC
17 liability standards under normal, that would be N-
18 0, N-1 and N-2 contingency conditions with the
19 proposed SPS for the primary point of
20 interconnection.

21 I don't see anything there that says
22 that either what the proposed SPS is, or what
23 would trigger it.

24 HEARING OFFICER CELLI: Again, I don't
25 know, I just looked up exhibit 76; they're

1 supplemental responses to data requests. So I'm
2 not sure what exhibit we're talking about.

3 MS. LUCKHARDT: Exhibit 76 includes an
4 attachment. The attachment is DR-50 to exhibit
5 76, which is the system impact study.

6 HEARING OFFICER CELLI: The system
7 impact study, I got you. Thank you. So that's in
8 appendix A?

9 MR. MARCUS: No. I was referring to
10 appendix A of the -- page 8 of appendix A. And
11 then I was subsequently referring to page 19 of
12 the SPS, itself.

13 I believe it also is referenced on page
14 7. Perhaps not.

15 MS. LUCKHARDT: Referring you to page 7,
16 isn't it true that that's required with an outage?
17 That's indicating that an SPS would be required
18 only with an outage?

19 MR. MARCUS: Yes. Page 7 is a list of
20 particular outages under which an SPS would be
21 required.

22 MS. LUCKHARDT: So you can point to no
23 specific place where it says that an SPS would be
24 required under normal or N-0 conditions?

25 MR. MARCUS: No. And I'm hoping that

1 there would not be one in the final LGIA. And all
2 I'm proposing is that there shouldn't be one. I'm
3 not saying that they have proposed one here. I'm
4 saying that they shouldn't propose one, or that
5 there shouldn't be one that would be associated
6 with an Energy Commission-approved project.

7 MS. LUCKHARDT: Isn't it true that the
8 SPS states that there's no adverse system impacts
9 were found with the VSP interconnection at Barren
10 Ridge in terms of transient, post-transient
11 stability analysis?

12 MR. MARCUS: Yes. And those are all
13 transmission system impacts. That's saying the
14 wires, themselves, are going to be intact. The
15 wires are not going to burn down under various
16 transient conditions with an SPS to make sure that
17 they don't.

18 That doesn't address the issue raised in
19 my testimony, and for that matter, conceded in
20 applicant's rebuttal testimony, that you wouldn't
21 necessarily get the full 250 megawatts of output
22 of the plant if there were curtailments triggered
23 by an SPS.

24 MS. LUCKHARDT: But isn't that something
25 that is required for almost every interconnection

1 of a facility in California?

2 MR. MARCUS: I'm sorry, isn't what
3 required for almost every interconnection?

4 MS. LUCKHARDT: Under outage conditions,
5 is it unusual under outage conditions to have to
6 turn something down?

7 MR. MARCUS: Under outage conditions
8 there's --

9 MS. LUCKHARDT: To back off a power
10 plant.

11 MR. MARCUS: Under outage conditions it
12 is not unusual to have to back off a power plant.
13 I'm not sure it's the norm, but it's not unusual.

14 MS. LUCKHARDT: Okay, I have nothing
15 further.

16 HEARING OFFICER CELLI: Staff, any
17 cross?

18 MR. BABULA: I have no more cross.

19 HEARING OFFICER CELLI: Okay. Any
20 redirect, Ms. Gulesserian?

21 MS. GULESSERIAN: Yes.

22 REDIRECT EXAMINATION

23 BY MS. GULESSERIAN:

24 Q David, when you testify about the LADWP
25 stating that they may need to curtail megawatts of

1 the Beacon Power Plant, is that under normal
2 conditions or under outage conditions?

3 We moved to enter into the record an
4 exhibit which is exhibit -- it was 655. This is
5 an email sent from CEC Staff, and they said,
6 please forward this to David Marcus. It is a
7 LADWP's --

8 HEARING OFFICER CELLI: Let's do this
9 because --

10 MS. GULESSERIAN: So I can do it on
11 cross, because it's theirs.

12 HEARING OFFICER CELLI: Maybe what we
13 can do is --

14 MS. GULESSERIAN: I think we'll
15 stipulate it.

16 HEARING OFFICER CELLI: -- if there's
17 any objection to stipulating this one in, because
18 we've already ruled that this document can come in
19 as late filed. What is the document?

20 MS. GULESSERIAN: This is -- we had a
21 conference call at your suggestion to try and work
22 out TSE issues --

23 HEARING OFFICER CELLI: Yes.

24 MS. GULESSERIAN: -- last week. And we
25 received on March 17th, which is on Wednesday,

1 this email from Energy Commission Staff, Sudath --
2 sorry, pronounced that wrong -- saying please
3 forward this information from LADWP.

4 HEARING OFFICER CELLI: I'm holding it
5 right now. Any objection to this document coming
6 in, applicant, Ms. Luckhardt?

7 MS. LUCKHARDT: No.

8 HEARING OFFICER CELLI: No objection.
9 Staff, any objection?

10 MR. BABULA: No objection.

11 HEARING OFFICER CELLI: Okay, so this
12 document is CURE's next in order. And CURE left
13 off at -- we've accepted -- we've received
14 everything from 600 to 636. There is 637 out
15 there, which --

16 MS. GULESSERIAN: We would like to just
17 leave it as a placeholder if that --

18 HEARING OFFICER CELLI: I'll just leave
19 that there. So this document, which is the
20 3/16/2010 email from Sudath Arachchige to docket
21 optical system, signed by Li Lee, would be marked
22 for identification as CURE's 638, for
23 identification.

24 Do you have a motion at this time? Do
25 you want to move it into the record so it can be

1 received, Ms. Gulesserian?

2 MS. GULESSERIAN: Yes, we move to enter
3 exhibit 638 into the record.

4 HEARING OFFICER CELLI: 638 is received
5 into evidence.

6 MS. GULESSERIAN: Thank you. Mr.
7 Marcus, can you answer the question now?

8 MR. MARCUS: Yes, you asked me whether
9 in what we now know as exhibit 638 the proposed
10 curtailment of BSP was under normal or contingency
11 conditions.

12 And that's addressed in the paragraph
13 numbered two on page 1 of exhibit 638, where it
14 says that, LADWP, quote, "will consider a remedial
15 action scheme, RAS, that will mitigate possible
16 overload of the Barren Ridge Rinaldi 230 kV line
17 prior to the construction of Barren Ridge
18 Renewable Transmission Project."

19 "This RAS would include ramping down VSP
20 generation or tripping VSP and would be
21 temporarily in place until the completion of the
22 Barren Ridge Renewable Transmission Project."

23 It does not say one way or the other
24 whether the ramping down or tripping of Beacon
25 would be occurring under normal conditions or N-1

1 or N-2 conditions. It doesn't say what the
2 proposed triggering events are, whether they are
3 high load, high generation, a combination of high
4 load and high generation, or some combination of
5 load and generation together with the transmission
6 outage.

7 HEARING OFFICER CELLI: Well, I have a
8 feeling we're going to hear about that, because
9 they're online.

10 Where are we now? Are we on cross?

11 MS. GULESSERIAN: Yes -- no, that was
12 redirect.

13 HEARING OFFICER CELLI: Okay, so that
14 was redirect.

15 MS. GULESSERIAN: I don't have any
16 other --

17 HEARING OFFICER CELLI: Any recross?

18 MR. BABULA: No.

19 HEARING OFFICER CELLI: Recross?

20 MS. LUCKHARDT: No.

21 HEARING OFFICER CELLI: Any further
22 witnesses from CURE with regard to transmission
23 system engineering?

24 MS. GULESSERIAN: No.

25 HEARING OFFICER CELLI: Okay. At this

1 time CURE, we did take in, it was exhibit 638,
2 received.

3 We'll turn to staff. Do you have a
4 witness?

5 DIRECT EXAMINATION

6 BY MR. BABULA:

7 Q Mark, are you on the line?

8 MR. HESTERS: Yeah, we're both on the
9 line.

10 MR. BABULA: Did you hear Mr. Marcus'
11 testimony?

12 MR. HESTERS: Yes.

13 MR. BABULA: Great. Would you like to
14 address what he said? I know you've gone through
15 this. You've already reviewed his rebuttal
16 testimony that was submitted. So if you can just
17 briefly address what he stated regarding concerns
18 with the line and the LGA and so forth.

19 MR. HESTERS: Yeah, one of the main
20 concerns -- again, this is Mark Hesters, last name
21 spelled H-e-s-t-e-r-s. I guess the main point of
22 the testimony of Dave Marcus' testimony was on
23 normal conditions. You don't usually run remedial
24 action schemes under normal conditions. Those are
25 usually reserved just for contingencies.

1 So we were talking about normal
2 conditions with all elements, with everything
3 working. The backdown or the tripping of
4 generation would usually fall under something
5 called congestion management.

6 In this case for these lines we're
7 talking about essentially three types of
8 generators on the line. You've got a wind
9 generator, a solar generator and then LA has some
10 hydroelectric generation.

11 The rare condition where the line would
12 be overloaded under normal conditions would be
13 when the wind and the solar were operating
14 together at pretty much their maximum output. And
15 that doesn't happen very often.

16 To basically back down some generation
17 under that condition isn't sort of an outrageous
18 idea. And LA proposed in some cases that they
19 would back down the hydroelectric generation under
20 that condition. Partly I'm inferring that from
21 one of the SPSs that shows up in the system impact
22 study.

23 That's a pretty reasonable solution to
24 this because the hydroelectric can often be
25 stored. On the rare chance that the wind and the

1 solar are generating at the same time, you just
2 have them for the moment that the wind is blowing
3 and the sun is shining. They may not be doing
4 that tomorrow and you may be able to get -- you
5 may save the hydro event for another hour, another
6 day, another week. You can't really save the sun
7 or the wind.

8 So I'm not -- I guess that's my comment
9 on the David Marcus testimony. It's pretty
10 reasonable that you would back down something and
11 that you would try and build a transmission system
12 that operated under most of the time, under most
13 conditions.

14 And, you know, if you actually built the
15 transmission system so that it could take all the
16 wind and all the solar and all the hydro, you'd be
17 almost over-building the system because you don't
18 have all three of those together very often.

19 So, that's it.

20 MR. BABULA: Okay, I have no further
21 questions.

22 HEARING OFFICER CELLI: Any questions on
23 cross by applicant of Mr. Hesters?

24 MS. LUCKHARDT: We have no additional
25 questions for Mr. Hesters.

1 HEARING OFFICER CELLI: Cross-
2 examination of Mr. Hesters by CURE?

3 MS. GULESSERIAN: We have no cross.

4 HEARING OFFICER CELLI: At some point,
5 applicant or staff, are you going to address the
6 three suggested inclusions into the condition of
7 certification from Mr. Marcus? Is that something
8 you need to hear from the witnesses on? I just
9 want to know what to do with this.

10 MR. BABULA: Well, I don't have --

11 HEARING OFFICER CELLI: It's an
12 outstanding question.

13 (Parties speaking simultaneously.)

14 MR. BABULA: His changes to have the
15 condition of certification read, you need to have
16 the agreement before construction of the project,
17 I don't think they shifted the burden in the sense
18 of what exactly is the problem.

19 HEARING OFFICER CELLI: Well, it is
20 their burden.

21 MR. BABULA: Right.

22 HEARING OFFICER CELLI: The burden is
23 he's made three suggestions and I just, without
24 getting into it too deeply, I just wanted to know
25 whether you anticipated responding to any of those

1 three conditions.

2 MR. BABULA: No, it's in our FSA
3 testimony, it's there. It stands. I don't
4 believe they shifted the burden to even have us
5 have to address that.

6 MR. HESTERS: We did have one response
7 to the first condition change.

8 HEARING OFFICER CELLI: Mr. Hesters, can
9 you hear me?

10 MR. HESTERS: This is Mark Hesters.

11 HEARING OFFICER CELLI: Mark, could you
12 hold on for a minute.

13 MR. HESTERS: The first condition change
14 that is proposed by --

15 HEARING OFFICER CELLI: No, there is no
16 question pending.

17 MR. HESTERS: -- CURE was that we
18 require that --

19 HEARING OFFICER CELLI: This is why
20 works.

21 MR. HESTERS: -- the large generator --
22 (Parties speaking simultaneously.)
23 (Laughter.)

24 MR. HESTERS: -- agreement be submitted
25 prior to the start of construction of the power

1 plant.

2 HEARING OFFICER CELLI: Actually, Mr.
3 Hesters, can you hear me?

4 MR. HESTERS: Yes.

5 HEARING OFFICER CELLI: There's no
6 question pending. I'm just going to ask you to
7 hold off for a moment.

8 MR. HESTERS: Okay.

9 HEARING OFFICER CELLI: Thank you.
10 Applicant, are you going to -- I just want to know
11 whether --

12 MS. GULESSERIAN: We move to strike that
13 what was -- whatever was said --

14 HEARING OFFICER CELLI: Motion granted.

15 MS. GULESSERIAN: Thank you.

16 HEARING OFFICER CELLI: Applicant.

17 MS. LUCKHARDT: Would you like us to
18 respond as to whether the project accepts the
19 requested changes or the requested additions to
20 the condition --

21 HEARING OFFICER CELLI: I think the --

22 MS. LUCKHARDT: -- proposed by Mr.
23 Marcus? I can have Mr. McCloud respond to that.

24 HEARING OFFICER CELLI: Here's what I'm
25 going to do instead, actually. When it comes time

1 to drafting the briefs I'm going to need the
2 parties to point me to where this is or is not
3 addressed. That's all. I'm not asking that you
4 give us any particular testimony at this time. I
5 just need to know whether and where the Committee
6 can look to see whether those three issues were
7 addressed. That's all.

8 MS. LUCKHARDT: Okay, and the issues
9 that he brought up as being issues, or -- the
10 issues that he brought up, is that true?

11 HEARING OFFICER CELLI: That's it, he
12 brought up three conditions, wanted to change the
13 condition in three ways.

14 MS. LUCKHARDT: Yeah. We've got
15 responses to the -- I think I'll just have
16 Mr. McCloud respond right here just to be sure
17 that we haven't missed anything as to whether he'd
18 be willing to accept the conditions proposed by
19 Mr. Marcus. And then we don't have to worry about
20 whether that's on or not on the record.

21 HEARING OFFICER CELLI: But, you know
22 what, we're in the middle of Mr. Hesters.

23 MS. LUCKHARDT: Okay.

24 HEARING OFFICER CELLI: The reason I was
25 asking is I thought if anyone, this was going to

1 be the witness who was going to talk about it.

2 In any event, --

3 MR. BABULA: Do you want -- I mean I
4 don't want to bog this process. If you want him
5 to address it, --

6 HEARING OFFICER CELLI: That's okay.

7 MS. LUCKHARDT: I believe that Mr.
8 Hesters is going to address this as to whether he
9 would recommend it.

10 HEARING OFFICER CELLI: Okay, then the
11 questioning, I guess, of Mr. Hesters is with
12 applicant at this time?

13 MS. LUCKHARDT: Sure.

14 CROSS-EXAMINATION

15 BY MS. LUCKHARDT:

16 Q Mr. Hesters, do you --

17 HEARING OFFICER CELLI: I'm sorry, I may
18 have lost track.

19 MS. LUCKHARDT: I'm just trying to make
20 sure that you're getting -- if that's the question
21 you want to ask.

22 HEARING OFFICER CELLI: Any further
23 cross of Mr. Hesters?

24 MS. LUCKHARDT: I guess the question --
25 Mr. Hesters, this is Jane Luckhardt. I just have

1 a question for you.

2 Do you feel the need to include the
3 requested changes to the conditions of
4 certification from Mr. Marcus into your condition
5 of certification?

6 MR. HESTERS: I have to say you cut out
7 for a brief second there. This is Mark Hesters.
8 I'm assuming you're asking me about the conditions
9 of certification changes proposed by David Marcus,
10 is that right?

11 MS. LUCKHARDT: Yes, and whether you
12 feel the need to include his request that we have
13 a signed large generator interconnection agreement
14 prior to, I think prior to construction, if I'm
15 paraphrasing it correctly.

16 MR. HESTERS: It's not a simple answer.
17 It's a little more complicated. We generally
18 require the large generator interconnection
19 agreement prior to the start of construction of
20 transmission facilities. And we would agree to
21 that change.

22 We would not agree to a change that it
23 be submitted prior to the start of the facility,
24 itself.

25 MS. LUCKHARDT: Thank you. I have

1 nothing further.

2 HEARING OFFICER CELLI: Cross, CURE, of
3 Mr. Hesters?

4 MS. GULESSERIAN: I don't have anything
5 further.

6 HEARING OFFICER CELLI: Redirect of
7 Mr. Hesters?

8 MR. BABULA: I don't have anything
9 further.

10 HEARING OFFICER CELLI: Okay. Did you
11 want to call Mr. Arachchige?

12 MR. BABULA: No, I just wanted -- Mark
13 took care of it.

14 HEARING OFFICER CELLI: Okay. Did
15 anyone want to cross Mr. Arachchige?

16 MR. BABULA: Just call him Sudath.

17 HEARING OFFICER CELLI: Sudath.

18 MS. LUCKHARDT: No.

19 MS. GULESSERIAN: No.

20 HEARING OFFICER CELLI: No cross, okay.
21 And then did we hear -- we heard from Mr. McCloud.

22 MS. LUCKHARDT: We haven't heard from
23 Mr. McCloud based upon the information provided by
24 Mr. Hesters.

25 //

1 DIRECT EXAMINATION

2 BY MS. LUCKHARDT:

3 Q And in an effort not to be repetitive, I
4 would only ask Mr. McCloud whether he thinks it's
5 necessary to include the requested additional
6 requirements that Mr. Marcus has presented.

7 MR. McCLOUD: And no, I do not.

8 HEARING OFFICER CELLI: Thank you.

9 MS. LUCKHARDT: And then I think there's
10 one potential exhibit, if I can get to the bottom
11 of everything that's here, that we may not have
12 entered when we entered transmission line safety
13 and nuisance. And that would be exhibit 334. And
14 if that has not been entered, I would like to have
15 that -- or we would offer that into evidence at
16 this time. That's the rebuttal testimony.

17 HEARING OFFICER CELLI: 334 is already
18 in.

19 MS. LUCKHARDT: Okay.

20 HEARING OFFICER CELLI: Transmission
21 line safety and engineering.

22 MS. LUCKHARDT: Great, as long as --

23 HEARING OFFICER CELLI: Oh, you withheld
24 it. So you're introducing it now.

25 MS. LUCKHARDT: Yeah.

1 HEARING OFFICER CELLI: Any objection,
2 CURE, to exhibit 334, rebuttal testimony of Duane
3 McCloud on transmission systems engineering?

4 MS. GULESSERIAN: No.

5 HEARING OFFICER CELLI: Any objection by
6 staff?

7 MR. BABULA: No objection.

8 HEARING OFFICER CELLI: Okay. On
9 applicant's motion exhibit 334 will be received
10 into evidence as 334, exhibit 334.

11 With that are we finished with
12 transmission system engineering.

13 MS. GULESSERIAN: I have a couple
14 questions for Mr. McCloud.

15 HEARING OFFICER CELLI: Okay, CURE,
16 please.

17 CROSS-EXAMINATION

18 BY MS. GULESSERIAN:

19 Q In your rebuttal testimony, which is
20 exhibit 334, I believe, there's a discrepancy in
21 LADWP's public statements regarding the Barren
22 Ridge Rinaldi transmission line capacity and
23 current usage, between the SIS and LADWP's Barren
24 Ridge Renewable Transmission Project. What --

25 MS. LUCKHARDT: I would object to that

1 question as presuming that there was a
2 discrepancy. And I don't believe that we agree
3 with that.

4 HEARING OFFICER CELLI: Okay, so the
5 objection is sustained in that there's a
6 conclusion.

7 MS. GULESSERIAN: Let me read from the
8 rebuttal testimony. It states that --

9 HEARING OFFICER CELLI: What are you
10 reading from, exhibit 334?

11 MS. GULESSERIAN: I'm reading from
12 exhibit 334.

13 HEARING OFFICER CELLI: Line or page?

14 MS. GULESSERIAN: Page 1, answer 6. It
15 says in the sentence that begins, If you simply
16 look at the value, and at the end it says, there
17 does appear to be a discrepancy. Okay.

18 "If you simply look at the value
19 assigned to Barren Ridge Rinaldi line by LADWP and
20 the document referenced by Mr. Marcus for the
21 rating of the Owens Gorge Rinaldi line, there does
22 appear to be a discrepancy."

23 That's the discrepancy I'm referring to.

24 HEARING OFFICER CELLI: Okay.

25 MS. LUCKHARDT: And I would again say

1 that based upon the way that sentence is phrased,
2 we are not agreeing that there is a discrepancy.
3 We are simply stating the way it was presented.

4 HEARING OFFICER CELLI: I understand
5 that. But, as a question, it's a fair question.
6 Or I'm going to allow the question.

7 MS. GULESSERIAN: Thank you.

8 Okay, so in your rebuttal it states that
9 there does appear to be a discrepancy. But then
10 you go on to argue, the apparent discrepancy may
11 be because the website is addressing a different
12 part of the Owens Gorge Rinaldi line than the SIS.
13 Is that correct?

14 MR. McCLOUD: That's correct.

15 MS. GULESSERIAN: Okay. Did you review
16 the LADWP website, itself, to see what it says?

17 MR. McCLOUD: I reviewed only the
18 testimony from Mr. Marcus.

19 MS. GULESSERIAN: Then which attached to
20 that testimony was the LADWP website.

21 MS. LUCKHARDT: I'm not sure that that's
22 the case. I think the LADWP website may be in the
23 additional exhibits, the ones that were presented
24 on Monday -- on Friday, as opposed to exhibits
25 that were presented earlier.

1 And I would just like to be sure that we
2 are referring to exhibits that were originally
3 attached to his testimony and not later-filed
4 exhibits.

5 MS. GULESSERIAN: Yes. We would like to
6 refer him to the original, the LADWP website on
7 the original testimony. And --

8 MS. LUCKHARDT: Which is located where?

9 MS. GULESSERIAN: Located at 619.

10 MR. BABULA: I'm kind of losing track
11 about what we're arguing about here.

12 MR. McCLOUD: Let me --

13 MS. GULESSERIAN: Really, --

14 MR. McCLOUD: What we're talking about
15 right now is exhibit 2, LADWP, Barren Ridge
16 Renewable Transmission Project. This was received
17 into evidence already. It was sponsored by David
18 Marcus, exhibit --

19 MR. BABULA: I thought the email that
20 was just put into exhibits was what Mr. Marcus
21 said resolved some of these questions about
22 ratings. I thought that we were past that.

23 HEARING OFFICER CELLI: That may be the
24 case, but right now there was a question about
25 discrepancies that were pointed out in Mr.

1 McCloud's testimony, in his rebuttal testimony.

2 CURE was asking a question. Applicant
3 interrupted the question based on the idea that
4 the question was predicated on some exhibits that
5 were not received into testimony, which isn't
6 really necessary if he's read, whatever. Maybe
7 you just need to find out whether he read and
8 knows what they're talking about.

9 MS. LUCKHARDT: He already said that he
10 had not.

11 HEARING OFFICER CELLI: Let's let
12 Mr. McCloud answer this question.

13 MS. LUCKHARDT: Do we remember what the
14 question was?

15 MS. GULESSERIAN: I just want to make
16 sure that he has been able to look at that website
17 that was attached to the testimony because we are
18 talking about the discrepancy between what the
19 LADWP website says.

20 HEARING OFFICER CELLI: So, Mr. McCloud,
21 have you read -- have you seen the website that
22 Ms. Gulesserian is asking about?

23 MS. LUCKHARDT: I think I would not want
24 it to be the website, in general.

25 MS. GULESSERIAN: Sorry, excuse me, --

1 MS. LUCKHARDT: I would want it to be
2 those pages that are --

3 MS. GULESSERIAN: -- exhibit 619.

4 MS. LUCKHARDT: -- attached.

5 MS. GULESSERIAN: I apologize.

6 MR. McCLOUD: Yes, I have.

7 HEARING OFFICER CELLI: Exhibit 619,
8 you're familiar with 619?

9 MR. McCLOUD: I have read through it,
10 yes.

11 HEARING OFFICER CELLI: Thank you. Go
12 ahead, Ms. Gulesserian.

13 MS. GULESSERIAN: Thank you. Isn't it
14 correct that you stated any one of the segments of
15 the longer transmission path identified by
16 Mr. Marcus along the Owens Gorge Rinaldi line
17 could be the segment that limits the overall
18 transmission capacity of a longer path to 400
19 megawatts? You have that in your testimony at the
20 top of page 2.

21 MR. McCLOUD: Yes, yes.

22 MS. GULESSERIAN: Okay. Have you seen
23 the revised website from LADWP correcting these --
24 adjusting these numbers?

25 MS. LUCKHARDT: Is that different from

1 what's in the --

2 MS. GULESSERIAN: Yes, this is what we
3 talked about earlier. CURE was going to identify
4 it as an exhibit. It's an update, so we cannot be
5 relying on the old 619 --

6 HEARING OFFICER CELLI: But the question
7 is has Mr. McCloud seen it.

8 MS. LUCKHARDT: Has Mr. McCloud seen it?

9 MS. GULESSERIAN: Has Mr. McCloud seen
10 this, the revised LADWP website --

11 MR. McCLOUD: No.

12 MS. GULESSERIAN: -- that we discussed
13 on the phone last week?

14 MR. McCLOUD: No, I have not.

15 MS. GULESSERIAN: Okay. I would like to
16 -- do you recall discussing it during our phone
17 conversation last week?

18 MR. McCLOUD: I do not recall discussing
19 it.

20 MS. GULESSERIAN: Okay. I'd like to
21 move to enter into the record an exhibit that we
22 discussed during our --

23 HEARING OFFICER CELLI: What is the
24 exhibit, please?

25 MS. GULESSERIAN: The exhibit is the

1 same thing as exhibit 619, but LADWP has revised
2 its numbers on the Barren Ridge Renewable
3 Transmission Project so it's the most up-to-date
4 information.

5 HEARING OFFICER CELLI: Let me ask you
6 this.

7 MS. LUCKHARDT: And this --

8 HEARING OFFICER CELLI: If I may. Do
9 you have a date, Ms. Gulesserian? So what is the
10 date of the document?

11 MS. GULESSERIAN: It was obtained from
12 downloading it from the website on March 17, 2009.

13 HEARING OFFICER CELLI: What is the date
14 of the updated information?

15 MS. GULESSERIAN: Updated January 2010.
16 Our original testimony was submitted in November
17 2010 (sic). This would be the -- 2009, excuse me.

18 HEARING OFFICER CELLI: So, the LADWP
19 updated the information on their website in
20 January of this year. And the only real relevant
21 question, Mr. McCloud, is whether you were aware
22 of that change, and if you're familiar with those
23 changes?

24 MR. MCCLOUD: And, no, I'm not. I'm not
25 familiar with the document that she's referring

1 to.

2 HEARING OFFICER CELLI: So you didn't
3 look at the website, and you haven't seen it at
4 least since January of 2010?

5 MR. McCLOUD: No, I have not.

6 HEARING OFFICER CELLI: Okay. Then it's
7 limited relevance at this point if he hasn't
8 looked at it.

9 MS. GULESSERIAN: And, no, it's very
10 relevant. The testimony was recently submitted by
11 the applicant, and it doesn't rely on the most
12 recent updated information regarding the --

13 HEARING OFFICER CELLI: That point is
14 made. I mean that's a point that you've got. But
15 here's the point I would -- I'm trying to decide
16 whether I need to bring this document into the
17 record. Why does the Committee need to read this,
18 other than to know that it's not a part of Mr.
19 McCloud's --

20 MS. LUCKHARDT: And I actually would
21 object to this. There was an opportunity for
22 filing rebuttal testimony. They did not take
23 advantage of that opportunity.

24 They did so with Mr. Hagemann's
25 testimony where he had found additional

1 information.

2 HEARING OFFICER CELLI: Yeah, I think --

3 MS. LUCKHARDT: They supplemented his
4 testimony. This showed up the Friday before. If
5 they were aware of it and wanted to bring it to
6 all of our attention, they should have and had
7 plenty of opportunity to do so.

8 HEARING OFFICER CELLI: I think that the
9 point is this.

10 MS. GULESSERIAN: We were --

11 HEARING OFFICER CELLI: They're bringing
12 it in on cross, which is okay if Mr. McCloud was
13 aware of it. But since he's not aware of it, it's
14 sort of a nullity at this point.

15 MS. GULESSERIAN: We discussed this, the
16 updated website, during our phone call last week
17 at the direction of you to try and resolve the
18 issue. Everybody was directed to --

19 MS. LUCKHARDT: At this point I would --

20 MS. GULESSERIAN: -- the new information
21 that LADWP has regarding the Barren Ridge
22 Renewable Transmission Project, so that we would
23 all be on the same page.

24 HEARING OFFICER CELLI: Can you just get
25 to the bottom line of this, please.

1 MS. LUCKHARDT: We were directed to the
2 email from LADWP, not to the website, LA's website
3 on their Barren Ridge Transmission Project.

4 HEARING OFFICER CELLI: Here's what I'm
5 trying to figure out at five minutes to 3:00 and
6 we're still talking about transmission system
7 engineering. What I'm trying to figure out is
8 what is the relevance, what does this thing say,
9 what is the point.

10 You've got a website out there. It says
11 what, I presume, the capacities are of these
12 lines. And there was an upgrade in January 2010
13 that says there's been a change.

14 If you could just give me what's the
15 change?

16 MS. GULESSERIAN: The modification from
17 LADWP shows that the part of the transmission line
18 with a 400 megawatt rating that Mr. McCloud is
19 referring to, which was previously identified in
20 exhibit 619 as the Owens Gorge Rinaldi is now
21 identified as the Barren Ridge Rinaldi line.

22 HEARING OFFICER CELLI: So it's just a
23 change in the name, okay.

24 MS. GULESSERIAN: It is not -- it is no
25 longer any one of the segments of the longer

1 transmission path that Mr. McCloud is referring
2 to. It is specifically the Barren Ridge Rinaldi.

3 HEARING OFFICER CELLI: If he was armed
4 with that information. But since this is a change
5 in nomenclature that occurred outside of his
6 awareness, then it isn't -- I don't know that you
7 can -- I think that in order to appropriately
8 ascribe the information that he's putting into the
9 record, we have to deal with whatever his state of
10 awareness was at the time that he stated it.

11 And if the testimony is he wasn't aware
12 of this change in nomenclature of the lines then
13 it really shouldn't have any effect on his
14 testimony.

15 MS. GULESSERIAN: This is --

16 MS. LUCKHARDT: I would also object --

17 MS. GULESSERIAN: -- recross of his --
18 this is addressing his rebuttal testimony that was
19 filed. We would like to know whether his opinions
20 have changed today.

21 HEARING OFFICER CELLI: That's fair and
22 you can ask that question.

23 MS. LUCKHARDT: But at some point --

24 HEARING OFFICER CELLI: I'm just not
25 sure I want to bring this thing into the record.

1 MS. LUCKHARDT: I'm just not sure at
2 some point that this is relevant. What we're
3 talking about is the website talking about a
4 renewable energy project transmission upgrade.
5 And we have in front of us a system impact study
6 on this particular facility. We have a confirming
7 email from LADWP. And I'm not sure why we are
8 looking at a transmission project as opposed to
9 looking at an analysis that was done by LA for
10 this specific project.

11 I'm just not sure that it makes good
12 sense of our time to be spending hours looking at
13 something like LA's website, as opposed to looking
14 at the analysis that was done on this specific
15 project by LADWP, who is the transmission owner
16 and operator of that system.

17 HEARING OFFICER CELLI: So this goes in.

18 MS. GULESSERIAN: Mr. McCloud refers to
19 the LADWP website in his rebuttal testimony, and
20 refers to the information that I just spoke about
21 regarding that segments of the longer transmission
22 path, he says, could be any one of the segments.

23 And the LADWP website, at the time that
24 this rebuttal testimony was filed, does not show
25 that.

1 MS. LUCKHARDT: And that's because he
2 based it on the analysis that was included in Mr.
3 Marcus' testimony. It was rebuttal to Mr. Marcus'
4 testimony and the attachments included thereto.

5 HEARING OFFICER CELLI: I kind of, my
6 sense is that this is, it isn't as much of that.
7 Let me put it this way: I don't think this
8 document does anything more than impeaches
9 Mr. McCloud if he was aware of the existence of
10 the document and the change of the nomenclature of
11 the line.

12 And since the testimony already is that
13 he was not aware of it, it is of questionable
14 value. And I'm disinclined to bring it in right
15 now, because all I think it's going to do is
16 confuse the issue. We'll be bringing in a change
17 he wasn't aware of, and didn't rely on, and isn't
18 using so far in his rebuttal testimony.

19 His rebuttal testimony, if I have this
20 right, Mr. McCloud, your rebuttal testimony is
21 based upon what you already said in your previous
22 testimony. And if it was relying on that
23 transmission, was it your understanding of the way
24 it was when you last visited it sometime before
25 January 2010?

1 MR. McCLOUD: That is correct.

2 HEARING OFFICER CELLI: Okay, I mean if
3 I'm understanding this correctly, I just don't
4 think that it does anything more than cloud the
5 issue.

6 MS. GULESSERIAN: The testimony
7 specifically states that he's referring to LADWP's
8 information on the transmission line and
9 Mr. Marcus' testimony. And he has rebuttal
10 testimony to my witness that has incorrect
11 information in it. And the LADWP website that is
12 referred in there says something else.

13 So we believe that it should be entered
14 into the record. It's not going to confuse the
15 issue. It's evidence related to the case that
16 people would normally rely on, the most updated
17 information regarding the Barren Ridge Renewable
18 Transmission Project from a agency, the Los
19 Angeles --

20 HEARING OFFICER CELLI: If you can lay a
21 foundation using Mr. McCloud right now to say that
22 he was aware of that document as it exists now,
23 the way that you want to put it in as a new
24 document, then you've got yourself a foundation.

25 MS. LUCKHARDT: And I would --

1 HEARING OFFICER CELLI: But if not, then
2 there is no foundation.

3 MS. LUCKHARDT: And I would object that
4 anyone would do a transmission study based on
5 another transmission owner's website. So I just
6 don't understand the absolute relevance of this
7 document when you're looking at an interconnection
8 study for a facility.

9 HEARING OFFICER CELLI: Let me just put
10 it this way. I'm not sure she's going to be able
11 to lay a foundation. But I'm going to give Ms.
12 Gulesserian an opportunity to lay a foundation.
13 If she can lay the foundation, and the foundation
14 needed is he was aware of this incarnation of the
15 website and that he relied on this incarnation of
16 the website in making his conclusion, and that it
17 would be relevant.

18 But if he wasn't aware of it, I don't
19 know how relevant it is. So, Ms. Gulesserian, I
20 think you need to lay a foundation. You need to
21 make that showing or else it has no relevance.

22 MS. GULESSERIAN: I was going to try and
23 ask one simple question that maybe would end this
24 all.

25 HEARING OFFICER CELLI: Well, let's go

1 for that.

2 MS. GULESSERIAN: Rather than going for
3 the -- laying the foundation.

4 If you knew that the existing Barren
5 Ridge, if I can ask a question correctly. If you
6 knew that the existing Barren Ridge Rinaldi 230 kV
7 transmission line is the line that is referred to
8 in the LADWP website instead of the Owens Gorge
9 Rinaldi Line, would that change your testimony in
10 any way?

11 MS. LUCKHARDT: And you're saying if you
12 knew, based upon information that was contained in
13 a website?

14 MS. GULESSERIAN: Based on LADWP's
15 project description. This is their project.

16 MS. LUCKHARDT: Based on something
17 that's in a website?

18 HEARING OFFICER CELLI: Your question
19 was if you knew that the Barren Ridge Rinaldi 230
20 kV line was what, Ms. Gulesserian?

21 MS. GULESSERIAN: If you knew that the
22 Barren Ridge Rinaldi transmission line, which has
23 a 400 megawatt transfer capacity currently is
24 loaded with 160 megawatts of electrical load,
25 leaving only 240 megawatts of excess capacity. If

1 you knew that it was the Barren Ridge Rinaldi Line
2 and not the Owens Gorge Rinaldi Line, as
3 referenced in that testimony, would it change your
4 opinion that any one of the segments of the longer
5 transmission path identified by Mr. Marcus along
6 that line could be the segment?

7 MR. McCLOUD: Let me make sure I
8 understand your question here.

9 MS. GULESSERIAN: Okay.

10 MR. McCLOUD: The question is if I knew
11 the name of the line was changed --

12 MS. GULESSERIAN: Right. If you knew
13 that it said Barren Ridge instead of Owens --

14 MR. McCLOUD: -- and nothing else,
15 would it change my opinion of it?

16 MS. GULESSERIAN: Right. If you knew
17 that it said Barren Ridge transmission line
18 instead of Owens Gorge transmission line, would
19 you still be saying it could be any one of the
20 segments?

21 MR. McCLOUD: I'm going to answer the
22 question with clarification. If the only change
23 that I was aware of was that the name of the line
24 had changed, it would not have changed my
25 conclusions about the opinion in the testimony.

1 MS. GULESSERIAN: It's not the name of a
2 line, it's the name of the segment that has that
3 limit.

4 MS. LUCKHARDT: I'm sorry, but you are
5 assuming -- so you're asking him to -- you are
6 stating that that is a fact, that the name of the
7 segment has changed. And I believe that that is a
8 fact that is not in evidence at this time.

9 HEARING OFFICER CELLI: It's a
10 hypothetical question. What I'm going to do is
11 I'm going to ask it this way, because Mr. McCloud
12 has already testified that his opinion would not
13 change if the name of the lines changed.

14 Now you wanted to change the question to
15 a segment.

16 MS. GULESSERIAN: The question is
17 whether the segment. I mean it is a segment,
18 Barren Ridge Rinaldi segment.

19 HEARING OFFICER CELLI: Okay, Barren
20 Ridge Rinaldi segment --

21 MS. GULESSERIAN: And it's one sentence
22 at the top of line 2 on your testimony that says
23 any one of the segments along the Owens Gorge
24 Rinaldi line could be the segment.

25 HEARING OFFICER CELLI: Do you see what

1 she's pointing to --

2 MR. McCLOUD: Yes, I do.

3 HEARING OFFICER CELLI: So he sees the
4 testimony. Now the question is?

5 MS. GULESSERIAN: Now the question is if
6 you knew that it was specifically the Barren Ridge
7 Rinaldi transmission line segment, which has a 400
8 megawatt transfer capacity, currently loaded with
9 160 megawatts of electrical load, leaving only 240
10 megawatts of excess capacity, would you still be
11 saying it's any one of the segments?

12 MR. McCLOUD: Okay, the question you
13 just asked is inconsistent with the transmission
14 maps in the SIS, and it's inconsistent with the
15 previous exhibits, so I cannot answer that
16 question. It's a question that doesn't make sense
17 to me.

18 MR. BABULA: Let's go on to bio.

19 (Laughter.)

20 HEARING OFFICER CELLI: I'd like to.

21 (Parties speaking simultaneously.)

22 MS. GULESSERIAN: We're going to -- I
23 have no further questions for this witness.

24 HEARING OFFICER CELLI: Okay. Well,
25 this is the last witness on TSE. This was -- and,

1 Ms. Gulesserian, you had called this witness so I
2 have to give staff an opportunity to cross.

3 MR. BABULA: No, I'm done with
4 transmission.

5 HEARING OFFICER CELLI: And, applicant,
6 any, applicant, any questions?

7 MS. LUCKHARDT: On transmission, no.

8 HEARING OFFICER CELLI: Okay. Then we
9 have no further witnesses, Ms. Gulesserian, on
10 transmission?

11 MS. GULESSERIAN: No, we do not.

12 HEARING OFFICER CELLI: Staff?

13 MR. BABULA: No further witnesses.

14 HEARING OFFICER CELLI: Applicant?

15 MS. LUCKHARDT: No.

16 HEARING OFFICER CELLI: Very good. Then
17 I want to thank Mark Hesters and Sudath for your
18 testimony today. You're dismissed and you're
19 muted.

20 (Laughter.)

21 MS. LUCKHARDT: Do you want to mute
22 Steve Richards, as well, he's --

23 HEARING OFFICER CELLI: Mr. Richards,
24 thank you for your testimony. We are going to
25 mute you as well.

1 We're going to take a break until 3:15.

2 When we return from the break at 3:15 we are
3 going to deal with biology.

4 (Brief recess.)

5 HEARING OFFICER CELLI: Resume. Now, I
6 may need to -- so we will have an opportunity for
7 the public to comment when we are finished with
8 biology, and hopefully biology won't take that
9 long. The parties --

10 MR. BABULA: There's hazardous, waste
11 and material, too.

12 HEARING OFFICER CELLI: Pardon me?

13 MR. BABULA: We've got hazardous, HTS.

14 HEARING OFFICER CELLI: Okay, okay.
15 Just because the way you were at the mic all I
16 heard was waste, and I thought this is a fine way
17 to talk.

18 (Laughter.)

19 HEARING OFFICER CELLI: Okay, now, so
20 we're going to have public comment probably this
21 evening. The parties estimated an hour and 40
22 minutes at the prehearing conference on biology.
23 At the rate we're going, it's 20 after 3:00, we
24 may go until 4:45 or 5:00 before we can get to
25 public comment.

1 So I hope that's helpful to the members
2 of the public who have hung out and listened and
3 want to make public comment. We will give you
4 that opportunity at the close of the biological
5 resources evidence.

6 So we're now waiting for Ms.
7 Gulesserian. She'll be here in a moment. That
8 hour and 40 minutes, I know, was an ambitious
9 goal. But I'd like to see what we can do to try
10 to stick to that.

11 Did we take in, applicant, I have
12 received the executive summary. I haven't
13 received project description, which may not -- I
14 was just talking to Ms. Gulesserian, and project
15 description may not be at issue.

16 I've received air quality, I'm about to
17 receive biological. We've received all cultural,
18 I believe. Geology. We haven't received
19 hazardous material. We've received hydrology;
20 we've received land use; and we've received noise.

21 Yes, noise; paleontology. Public health was
22 received; socioeconomics; soils; traffic and
23 transportation; transmission line safety and
24 engineering; visual.

25 We have not received waste. We have

1 received water. I don't remember if we took
2 worker safety. We did receive worker safety;
3 facility design. We have not taken in
4 alternatives yet because that was disputed, but
5 we're just going to take that evidence in a
6 moment.

7 And then, staff, we've received 500
8 through 506, which is the sum total of all your
9 exhibits.

10 MR. BABULA: Correct.

11 HEARING OFFICER CELLI: And, CURE, I've
12 received 600 through 638, not including 637,
13 that's pending resolution of that issue. And so
14 that's where we stand with regard to evidence.

15 We're about to begin biology. I
16 received at the beginning, let me just say that at
17 the prehearing conference the Committee ordered
18 the parties to confirm, we asked them to have a
19 telephone conversation to hammer out any
20 stipulations, changes to conditions of
21 certification that they could come up with.

22 And today at the beginning of the day I
23 received this document.

24 MR. BABULA: Is the tape recorder
25 clicking again?

1 MR. SPEAKER: Yes, it is clicking, but
2 your tape recorder's going.

3 HEARING OFFICER CELLI: But you have
4 another tape recorder going, right? So we're on
5 the air.

6 THE REPORTER: This is backup backup.

7 HEARING OFFICER CELLI: So I have
8 conditions for biological resources that I
9 received this morning. And presumably applicant
10 and staff, because I don't think CURE was involved
11 in any of the disputes with regard to the
12 conditions, worked out some --

13 MR. BABULA: Right, that's the
14 conditions of certification, and that's the final
15 version that we worked out between the staff and
16 the applicant.

17 HEARING OFFICER CELLI: Do you have
18 remaining, are there issues?

19 MR. BABULA: We have no other issues
20 with the applicant.

21 HEARING OFFICER CELLI: With regard to
22 the staff and the applicant, as it relates to
23 conditions of certification for biology?

24 MR. BABULA: Correct.

25 MS. LUCKHARDT: That is correct.

1 HEARING OFFICER CELLI: And this, what
2 exhibit number is this?

3 MS. LUCKHARDT: That one we've marked or
4 had that one listed as 338.

5 HEARING OFFICER CELLI: 338. Okay. And
6 at this time, Ms. Luckhardt, did you want to put
7 in all of your biological documentary evidence,
8 including exhibit 338, so --

9 MS. LUCKHARDT: Right. At this time
10 applicant moves exhibit 7, AFC section 5.3;
11 exhibit 35, AFC appendix F; exhibit 36, AFC
12 appendix F, the supporting documentation including
13 attachment G, which is the Mojave Desert Tortoise
14 and Mojave ground squirrel habitat assessment
15 reports.

16 Exhibit 52, the data adequacy
17 supplement; exhibit 59, the summary of pre-
18 application field meeting; exhibit 62, the
19 response to CEC data requests 13 through 16 and 18
20 through 25.

21 Exhibit 71, the streambed alteration
22 agreement; exhibit 73, supplemental responses to
23 CEC data requests 17, 18, and 20, with attachment
24 DR-17. Exhibit 78, revised response to data
25 request 14.

1 Exhibit 79, responses to CEC data
2 requests 71 through 78; exhibit 87, the botanical
3 and wildlife special status species spring survey
4 report. Exhibit 88, the response to California
5 Department of Fish and Game letter on the Beacon
6 Solar Energy project streambed alteration
7 notification.

8 Exhibit 90, supplemental workshop
9 responses to data requests 14, 17 and 20. Exhibit
10 92 is the application for the incidental take or
11 threatened endangered species section 2081 permit.

12 Exhibit 110, which is the application for low
13 effects habitat conservation plan.

14 Exhibit 114, the preliminary PSA
15 comments, section 2B; exhibit 129, the PSA
16 comments regarding biological resources; exhibit
17 130, the PSA comments attachment bio-1, the desert
18 tortoise removal plan.

19 Exhibit 131, the PSA comments attachment
20 bio-2, the burrowing owl relocation plan; exhibit
21 151, the common raven monitoring, management and
22 control plan; exhibit 171, the project design
23 refinement section 4.1.2. Correction, that's
24 section 4.1.2.

25 Exhibit 178, the project design

1 refinement section 4.2.2. Exhibit 195, the
2 project design refinements attachment 1-B for the
3 re-routed wash mitigation plan; exhibit 198,
4 project design refinements attachment 4-A.

5 Exhibit 199, project design refinements
6 attachment 4B, which is the desert tortoise
7 survey; exhibit 219 is the 8/1/09 email regarding
8 the Red Rock Poppy from Kenny Stein; exhibit 220,
9 habitat conservation plan.

10 Exhibit 235 is the declaration of Alice
11 Karl on biological resources; exhibit 272, the
12 declaration of Jennifer Guigliano on biological
13 resources; exhibit 277, the declaration of Jim
14 Prine on biological resources; exhibit 282, the
15 declaration of Kenneth Stein on biological
16 resources.

17 Exhibit 288, the declaration of Lyndon
18 Quon on biological resources; exhibit 299, the
19 declaration of Philip Leitner on biological
20 resources; exhibit 325, the rebuttal testimony of
21 Jennifer Guigliano on biological resources;
22 exhibit 326, the rebuttal testimony of Alice Karl
23 on biological resources.

24 Exhibit 327, rebuttal testimony of Philip
25 Leitner on biological resources; exhibit 328,

1 rebuttal testimony of Kenneth Stein on biological
2 resources; and exhibit 338, which is the revised
3 biological conditions of certification, which were
4 agreed to with Commission Staff last week.

5 HEARING OFFICER CELLI: Any objection
6 from CURE?

7 MS. GULESSERIAN: No objections.

8 HEARING OFFICER CELLI: Any objection
9 from staff?

10 MR. BABULA: No objections.

11 HEARING OFFICER CELLI: Thank you. With
12 that the following exhibits marked for
13 identification as 7, 35, 36, 52, 59, 62, 71, 73,
14 78, 79, 87, 88, 90, 92, 110, 114, 129, 130, 131,
15 151, 171, 178, 195, 198, 199, 219, 220, 235, 272,
16 277, 282, 288, 299, 325, 326, 327, 328 and 338 are
17 received into evidence.

18 Please call your first witness.

19 MS. LUCKHARDT: Okay, we have a panel of
20 four witnesses.

21 HEARING OFFICER CELLI: Please stand and
22 be sworn.

23 MS. LUCKHARDT: Some of whom need to be
24 sworn.

25 HEARING OFFICER CELLI: Yes. All of

1 you, please.

2 MS. LUCKHARDT: Mr. Stein has been
3 previously sworn.

4 Whereupon,

5 KENNETH STEIN
6 was recalled as a witness herein, and having been
7 previously duly sworn, was examined and testified
8 further as follows:

9 Whereupon,

10 JENNIFER GUIGLIANO, ALICE KARL,
11 and PHILIP LEITNER
12 were called as witnesses herein, and after first
13 having been duly sworn, were examined and
14 testified as follows:

15 HEARING OFFICER CELLI: I'm going to ask
16 that you state and spell your name for the record,
17 working this way, with you, ma'am, first.

18 MS. GUIGLIANO: Jennifer Guigliano,
19 G-u-i-g-l-i-a-n-o.

20 DR. KARL: Alice Karl, K-a-r-l.

21 MR. STEIN: Kenny Stein, S-t-e-i-n.

22 DR. LEITNER: Philip Leitner, Philip
23 with one "l", L-e-i-t-n-e-r. Otherwise known as
24 Phil.

25 HEARING OFFICER CELLI: Thank you.

1 MR. BABULA: Would you like to have our
2 witnesses sworn in, too just to get that out of
3 the way?

4 HEARING OFFICER CELLI: Okay, let's.
5 These are staff's witnesses to be sworn.
6 Whereupon,

7 JULIE VANCE, SUSAN SANDERS
8 and JUDY HOHMAN
9 were called as witnesses herein, and after first
10 having been duly sworn, were examined and
11 testified as follows:

12 HEARING OFFICER CELLI: And I'm going to
13 ask you to identify and spell your name for the
14 record, working in the opposite direction. Please
15 go ahead.

16 MS. VANCE: Julie Vance, J-u-l-i-e
17 V-a-n-c-e.

18 HEARING OFFICER CELLI: And you're with?

19 MS. VANCE: Department of Fish and Game.

20 HEARING OFFICER CELLI: Okay.

21 DR. SANDERS: Susan Sanders,
22 S-a-n-d-e-r-s, with the Energy Commission.

23 MS. HOHMAN: Judy Hohman, H-o-h-m-a-n;
24 I'm with the U.S. Fish and Wildlife Service.

25 HEARING OFFICER CELLI: Thank you.

1 Okay, this is applicant -- or, no, this is CURE.
2 I'm trying to remember where we're at.

3 MR. BABULA: It's CURE's burden,
4 actually, because we've agreed with that.

5 HEARING OFFICER CELLI: It's CURE's,
6 that's right. And, CURE, you have a witness who
7 needs to be sworn, so let's swear in another
8 witness. Please stand and raise your hand.
9 Whereupon,

10 MICHAEL BIAS
11 was called as a witness herein, and after first
12 having been duly sworn, was examined and testified
13 as follows:

14 HEARING OFFICER CELLI: Please state and
15 spell your name.

16 DR. BIAS: Michael Bias, B-i-a-s.

17 HEARING OFFICER CELLI: Okay. Now in
18 light of the fact that all of the conditions are
19 settled between applicant and staff, what we're
20 dealing with now are challenges to the FSA from
21 CURE. Do I have this right? So, with that, CURE,
22 you'll begin. Call your first witness.

23 MS. GULESSERIAN: Thank you. We call
24 Michael Bias.

25 //

1 DIRECT EXAMINATION

2 BY MS. GULESSERIAN:

3 Q Can you please state your name for the
4 record.

5 DR. BIAS: Michael Bias.

6 MS. GULESSERIAN: And whose testimony
7 are you sponsoring today?

8 DR. BIAS: I'm sponsoring Scott Cashen's
9 testimony and my own.

10 MS. GULESSERIAN: Did you, with respect
11 to Scott Cashen's testimony did you independently
12 review all information and documents referenced in
13 Mr. Cashen's sworn testimony?

14 DR. BIAS: Yes.

15 MS. GULESSERIAN: What did you conclude?

16 DR. BIAS: I agree with his findings.

17 MS. GULESSERIAN: Is it based on your
18 own professional judgment? Is your opinion based
19 on your own professional judgment?

20 DR. BIAS: It is.

21 MS. GULESSERIAN: Is it based on facts?

22 DR. BIAS: It is.

23 MS. GULESSERIAN: You're also adopting
24 testimony that is your own today?

25 DR. BIAS: I am.

1 MS. GULESSERIAN: Do you have any
2 changes to your sworn testimony?

3 DR. BIAS: I do. On the second-to-last
4 page -- my page numbers aren't numbered.

5 HEARING OFFICER CELLI: What exhibit are
6 we talking about?

7 MS. GULESSERIAN: We are talking
8 about --

9 HEARING OFFICER CELLI: Also, Mr. Bias,
10 if you could get that mic closer to you. Please
11 give me the exhibit number and the page where --

12 MS. GULESSERIAN: Exhibit 632.

13 DR. BIAS: And it's the second-to-last
14 page, I don't have page numbers on mine. Second
15 full paragraph, first sentence. It reads:
16 Although the Rosamond pipeline alignment study
17 area encompasses 5,987 acres, project impact to
18 the plant communities was estimated only to be
19 92.36 acres. I mis-wrote that. The 92.36 should
20 be 11.2.

21 HEARING OFFICER CELLI: 92.36 should be
22 changed to 11.2.

23 DR. BIAS: 11.2, yes, sir.

24 HEARING OFFICER CELLI: Thank you.

25 MS. GULESSERIAN: Okay, I wanted to see

1 if we can stipulate so I don't need to go through
2 his qualifications?

3 HEARING OFFICER CELLI: Now, Mr. Bias
4 has, what is the exhibit that has Mr. Bias'
5 qualifications on it?

6 MS. GULESSERIAN: That is exhibit 635.

7 HEARING OFFICER CELLI: So, since 637 --
8 635 is already in the record, I wonder if we can
9 have a stipulation from the parties that Mr. Bias
10 is qualified as an expert pursuant to that
11 exhibit. Applicant?

12 MS. LUCKHARDT: I would like to better
13 understand Mr. Bias' experience in the desert and
14 with the species at issue in this proceeding.

15 HEARING OFFICER CELLI: You know, I
16 really didn't want to get into this when we had
17 our prehearing conference, I really wanted
18 everybody -- if we had a problem with somebody's
19 expertise, I wanted to hear about that.

20 We have his evidence is in, including
21 his résumé. And I think that the understanding
22 would be that the parties would stipulate that he
23 can testify to areas within the expertise as laid
24 out in his résumé.

25 Is that acceptable to you?

1 MS. LUCKHARDT: If that is the
2 preference that is acceptable.

3 HEARING OFFICER CELLI: Well, I
4 appreciate that. So stipulated. And, staff?

5 MR. BABULA: That'll be acceptable.

6 HEARING OFFICER CELLI: Okay, thank you.
7 So there is no need to take testimony on it. You
8 are an expert on the areas mentioned in your
9 résumé and so we don't need to cover that ground.
10 And thank you for bringing that up, appreciate it.
11 Anything we can do to economize we appreciate.

12 MS. GULESSERIAN: Okay. Mr. Bias, can
13 you please summarize your principal findings.

14 DR. BIAS: First the FSA assumes the
15 presence of desert tortoise, Mojave ground
16 squirrel and burrowing owls along portions of the
17 23 miles of the Rosamond pipeline alignment.

18 And then based on reconnaissance level
19 surveys of habitat, that's what this assumed
20 presence was based on. However, the FSA's 33-acre
21 compensation requirement is inconsistent with the
22 nearly 4700 acres of potential habitat impacted by
23 the project.

24 HEARING OFFICER CELLI: Speak into that
25 mic, if you would, please.

1 DR. BIAS: However, the FSA's 33-acre
2 compensation requirement is inconsistent with the
3 nearly 4700 acres potentially impacted by that
4 project, identified by staff.

5 The FSA fails to provide mitigation for
6 potentially significant impact to burrowing owls
7 along the 23 miles of the Rosamond pipeline
8 alignment.

9 For Mojave ground squirrels on the
10 project site, the baseline levels for presence of
11 Mojave ground squirrels was not met. Therefore,
12 the impact analysis was flawed, such that the
13 mitigation compensation is inadequate with the
14 project site.

15 The same issues apply with desert
16 tortoise, that surveys less than 100 percent
17 protocol surveys were less than adequate to
18 establish baseline. The impact analysis was then
19 flawed. And therefore, mitigation and
20 compensation habitat requirements were inadequate
21 for desert tortoise, as well as burrowing owls.

22 For the project site surveys across
23 three years '07, '08 -- well, three surveys across
24 two years, '07 and '08, detected as many as nine
25 individual owls from the FSA. And the mitigation

1 and compensation ratios are -- the mitigation and
2 compensation is based on two owl pairs.

3 Therefore, the baseline assessment of
4 the number of burrowing owls across the project
5 site is inadequate. The impact analysis then is
6 flawed. And also the mitigation and compensation
7 is inadequate.

8 MS. GULESSERIAN: Have you reviewed the
9 FSA's biological resources conditions of
10 certification?

11 DR. BIAS: I have.

12 MS. GULESSERIAN: Have you reviewed the
13 revisions to the conditions that we received on
14 Friday?

15 DR. BIAS: I have.

16 MS. GULESSERIAN: Would you briefly
17 summarize your understanding of those conditions?

18 DR. BIAS: Overall the biological
19 resource conditions require 115 acres of
20 compensation land for desert tortoise and Mojave
21 ground squirrel; 20 acres of compensation land for
22 burrowing owls.

23 This 20 acres may be included within the
24 desert tortoise and Mojave ground squirrel
25 compensation lands.

1 It requires preconstruction clearance
2 surveys. The mitigation and implementation and
3 monitoring program which it requires has not yet
4 been prepared. And 33 acres of compensation land
5 for desert tortoise and Mojave ground squirrel as
6 part of the Rosamond pipeline, is required under
7 the COCs and other measures, such as designated
8 biologists and biological monitoring and the like.

9 HEARING OFFICER CELLI: You said is or
10 is not required?

11 DR. BIAS: They are required.

12 HEARING OFFICER CELLI: Okay. The
13 conditions of certification require the mitigation
14 for the pipeline?

15 DR. BIAS: Correct.

16 HEARING OFFICER CELLI: Okay.

17 MS. GULESSERIAN: Based on your final
18 conclusions you've just articulated, and your
19 understanding of those conditions, would the
20 conditions address your findings and your
21 conclusion?

22 DR. BIAS: No.

23 MS. GULESSERIAN: Can you explain to us
24 why?

25 DR. BIAS: Yeah. Bio-11, desert

1 tortoise and Mojave ground squirrel compensatory
2 mitigation. Under the California Endangered
3 Species Act the mitigation compensation is
4 required to fully mitigate for habitat loss and
5 potential take.

6 The amount of potential habitat for
7 Mojave ground squirrel on the project site, as
8 calculated by the applicant, is 429.5 acres of
9 desert shrub scrub, vegetation types.

10 For Mojave ground squirrel also simply
11 the only habitat assessment that was conducted,
12 although not required, was essentially two one-day
13 surveys; one conducted in August and one conducted
14 in November. Outside, in fact, the appropriate
15 recommended time for visual surveys for Mojave
16 ground squirrels, which is 15 March to April 15.

17 And finally, under bio-11, for the
18 project site the 115 acres for Mojave ground
19 squirrel and desert tortoise is essentially one
20 quarter of the 429.5 acres of desert scrub that
21 will be lost.

22 For desert tortoise on the project site,
23 the FSA, less than protocol level surveys were
24 conducted for desert tortoise. They, -- in fact
25 the applicant, in an FSA, detected, in fact,

1 juvenile carcasses, deteriorated adult burrow.
2 And at least two other sets of bones and carapace
3 fragments, indicating the presence of at least
4 three desert tortoise onsite, showing presence.

5 And mitigation and compensation
6 requirements under bio-11 stipulated for only two
7 desert tortoise.

8 Bio-17, which is the impact, avoidance,
9 minimization and compensation requirements,
10 requires that the owner follow measures to avoid
11 and offset impacts to burrowing owls.

12 Three surveys across two years, well,
13 two surveys across two years and incidental
14 observation showed on the project site that at
15 least nine individual owls were detected.

16 As such, under the COC compensation is
17 requiring compensation for only two pairs of
18 burrowing owls, and it's therefore insufficient
19 mitigation to offset the impacts to burrowing owls
20 to a less than significant level.

21 Bio-21 is the Rosamond pipeline
22 mitigation. For this the desert tortoise and
23 Mojave ground squirrel presence was assumed. But
24 the habitat analysis along the line shows that
25 only 11 acres of impact would occur when nearly

1 over 4700 acres of potentially -- of habitat can
2 be potentially impacted.

3 According to the applicant's
4 biotechnical report, especially in deserts,
5 indirect impacts can often be considered permanent
6 because of the long time that it takes desert
7 ecosystems to recover.

8 Finally, I think bio-21 does not
9 adequately address the loss of burrowing owls or
10 their habitat based simply on clearance surveys as
11 mitigation.

12 MS. GULESSERIAN: Can you clarify when
13 you referred to condition of certification bio-21,
14 Rosamond pipeline mitigation. Does that condition
15 apply to the 40-mile pipeline, or to something
16 different?

17 DR. BIAS: The bio-21 applies to the 23-
18 mile segment of the Rosamond pipeline alignment.

19 MS. GULESSERIAN: Okay, thank you. I
20 have no further questions.

21 HEARING OFFICER CELLI: Staff, cross?

22 MR. BABULA: Just a couple questions.
23 We won't get into mitochondrial DNA of tortoises.

24 CROSS-EXAMINATION

25 BY MR. BABULA:

1 Q Have you been to where the pipeline
2 routes, vis-a-vis driven the routes where the
3 pipeline, proposed pipelines are going to be?

4 DR. BIAS: I saw where they were.

5 MR. BABULA: Okay.

6 DR. BIAS: In other words, driving
7 around near the project site.

8 MR. BABULA: And can you describe how it
9 looks from a habitat perspective, for the actual
10 pipeline on the road shoulder?

11 DR. BIAS: Well, the road shoulders are
12 essentially gravels and weeds. And then sloped
13 toes.

14 MR. BABULA: Would you consider that
15 habitat?

16 DR. BIAS: Well, it's habitat for
17 something. Is it habitat for Mojave ground
18 squirrels or desert tortoise? If the action area
19 for a linear project is the alignment plus 2400
20 feet on either side, you have to consider all
21 impacts and all habitat.

22 So, probably the immediate road shoulder
23 would not be desert tortoise habitat. However, I
24 can't say if they don't burrow in roadsides.
25 Certainly burrowing owls burrow in roadside. We

1 haven't looked for Mojave ground squirrels or
2 desert tortoise along that alignment.

3 MR. BABULA: Okay. I have a question
4 that's a little baffling. Now, you described the
5 project site as having a juvenile carcass, some
6 bone fragments. Okay, so that is --

7 DR. BIAS: I didn't --

8 MR. BABULA: -- that's what the --

9 DR. BIAS: -- describe the site as that.

10 MR. BABULA: That was the testimony from
11 the applicant in their surveys.

12 DR. BIAS: Correct.

13 MR. BABULA: Okay. And I want to ask
14 you, and I note in your testimony and in Scott
15 Cashen's testimony there's some issue between your
16 feeling of the habitat, sort of what the level of
17 habitat on the site versus what the applicant, how
18 they may characterize it.

19 So giving you a hypothetical here, look
20 at the Ridgecrest Project.

21 MS. GULESSERIAN: Objection, we're not
22 working on the Ridgecrest Project right now.

23 MR. BABULA: Well, it's a hypothetical
24 to try to juxtapose --

25 HEARING OFFICER CELLI: It's a

1 hypothetical. Let's just, one thing, let's
2 everyone be conscious of the fact that only one
3 person --

4 MR. BABULA: This is my last question.

5 (Laughter.)

6 HEARING OFFICER CELLI: Only one person
7 can talk at a time. Because if two people are
8 talking --

9 MR. BABULA: Right.

10 HEARING OFFICER CELLI: -- we can't get
11 a good transcript. So that's one thing I'm going
12 to ask you to be conscious of.

13 The other thing is we'll allow a
14 hypothetical question.

15 MR. BABULA: Okay. Ridgecrest, the same
16 company that's doing the surveys here, they went
17 out to Ridgecrest and 50 tortoises were found, 40
18 on the project site, similar acreage.

19 If the habitat on the Beacon site is
20 tortoise habitat to some extent, where are the
21 tortoises? It's not like they scatter when you
22 show up.

23 DR. BIAS: Yeah, that's a good question.

24 However, that's not what the protocol surveys are
25 meant to figure out. In fact, my feeling on what

1 habitat for desert tortoise looks like or is,
2 doesn't enter into the question.

3 My assessment on habitat quality or
4 whether it's good or whether it's bad is not a
5 question. The question that protocol level
6 surveys in projects like this are meant to address
7 is, is that habitat potentially, can desert
8 tortoises occur within that habitat. Protocol
9 level surveys attempt to answer that.

10 And then from those surveys we derive a
11 number. And as far as sign, you know, burrows,
12 scat, fragments of animals is all sign, carcasses.
13 Whether it's dead or alive it's still present
14 onsite.

15 HEARING OFFICER CELLI: Mr. Bias, if you
16 wouldn't mind just turning the mic right at your
17 mouth. Yes, thank you.

18 MR. BABULA: I've got one more question.
19 What do you mean by 4,000 acres of impact are
20 along the pipeline?

21 DR. BIAS: In the FSA, I'm trying to
22 recall the map alignments and the table numbers.
23 They did a fix with transect at 1,000 feet and
24 identified vegetation types from the pipeline
25 alignment out 1000 feet entirely along the 23

1 miles.

2 And there's a table in the analysis that
3 quantifies those vegetation types. And then
4 there's a following table, so this is a 2000-foot,
5 23-mile long map that essentially comes out to
6 4784 acres of those scrub habitat types.

7 It was atroplex shrub scrub and creosote
8 shrub scrub and the like. Which actually the 1000
9 foot is about 1400 foot off what it should have
10 been for a linear habitat assessment for desert
11 tortoise, which is 2400 feet.

12 So essentially that banded width
13 transect, that 23 miles, if protocol level surveys
14 were followed, should have been 4800 feet wide and
15 23 miles long, which is nearly 10,000 acres.

16 MR. BABULA: Okay, thank you. I'll let
17 our staff deal with that on direct. No further
18 questions.

19 HEARING OFFICER CELLI: Anything
20 further? Thank you. Applicant, questions of this
21 witness?

22 MS. LUCKHARDT: Sure.

23 CROSS-EXAMINATION

24 BY MS. LUCKHARDT:

25 Q You started off your discussion today

1 talking about the requirements that are contained
2 in the California Endangered Species Act. Isn't
3 it true that the California Endangered Species Act
4 requires mitigation for take of species and not
5 habitat?

6 DR. BIAS: Depends on which animal. If
7 we're talking desert tortoise it's requiring it
8 for the tortoise. If we're talking --

9 MS. LUCKHARDT: I'm referring to the
10 California Endangered Species Act.

11 DR. BIAS: And that's what I'm referring
12 to.

13 MS. LUCKHARDT: Okay.

14 HEARING OFFICER CELLI: So the testimony
15 is that the California Endangered Species Act
16 requires take of habitat for, you said, tortoise?

17 DR. BIAS: Well, any threatened --

18 MS. GULESSERIAN: This is -- I would
19 just object because this is a legal question that,
20 you know, this is not a lawyer, he's a biologist.

21 MS. LUCKHARDT: Well, had he not
22 testified to it initially I would not have asked
23 the question. But he presented it in some of his
24 opening remarks and so I think that opens him up.

25 HEARING OFFICER CELLI: It's a fair area

1 for cross. And all I was trying to do was get a
2 clarification on his answer.

3 DR. BIAS: Bio.

4 HEARING OFFICER CELLI: And I'm going to
5 ask you again to take that mic and put it right in
6 front of you like this. See how I have it, like
7 I'm talking right now.

8 DR. BIAS: I can, yeah.

9 HEARING OFFICER CELLI: That's what you
10 want to do.

11 MS. LUCKHARDT: And, Mr. Bias, is it
12 your testimony that the 23-mile pipeline between
13 the project site and Rosamond has not been subject
14 to protocol surveys?

15 DR. BIAS: Yes.

16 MS. LUCKHARDT: And is it your testimony
17 that the project site, itself, has not been
18 subject to protocol desert tortoise surveys?

19 DR. BIAS: Yes.

20 MS. LUCKHARDT: And, Mr. Bias, when was
21 the first time you visited the site?

22 DR. BIAS: Yesterday.

23 MS. LUCKHARDT: And did you drive around
24 the site?

25 DR. BIAS: I drove along the highway and

1 the frontage road. Because it's private land.

2 MS. LUCKHARDT: So you haven't walked
3 along the site, across the site, --

4 DR. BIAS: No.

5 MS. LUCKHARDT: -- in the different
6 areas? So is your analysis essentially that you
7 prefiled based solely on reading the evaluations
8 that were conducted?

9 DR. BIAS: No. I looked at -- I've been
10 working with -- I've been working on Beacon since
11 December '08. And looking at all the data
12 requests, the application for certification. And
13 also satellite images, Google Earth, goes back in
14 time now to, I think their earliest satellite
15 image was '94. So I looked at aerial imagery at
16 the site.

17 MS. LUCKHARDT: Dr. Bias, you quote
18 reports from authors on food preferences of the
19 Mojave ground squirrel, correct?

20 DR. BIAS: Correct. Well, no. I quote
21 author studies on food habits and some dietary
22 analyses. Food preferences are another level
23 beyond just deciding what the animal happens to be
24 eating at a particular time.

25 MS. LUCKHARDT: Okay, so it's dietary

1 analysis for the Mojave ground squirrel, is that a
2 better --

3 DR. BIAS: The only dietary --

4 MS. LUCKHARDT: -- way to put it?

5 DR. BIAS: The only dietary analyses
6 that was done was Leitner's work. Dietary
7 analyses involves detailed looking at what the
8 animal's eaten and what you can detect on what
9 comes out, whether it's fecal analysis, pellet
10 analysis for owls, things like that.

11 And dietary analyses that were done have
12 within them their own flaws such as depending on
13 the cell wall of the plant, might not make it
14 completely through the gut. So if you're trying
15 to decide what the animal's eaten based on fecal
16 analysis your results will be biased because only
17 certain plants pass completely through the gut
18 based on cell walls and how rigid the cells are.

19 MS. LUCKHARDT: Okay, on the bottom of
20 page 2 of your testimony you refer to a study of
21 Zembal and Gall, 1980. Showed that Mojave ground
22 squirrels preferred seeds from Joshua trees.

23 DR. BIAS: Right. That was their work.
24 And they looked at that.

25 MS. LUCKHARDT: Are there Joshua trees

1 on this site?

2 DR. BIAS: I don't think so. But wasn't
3 there a report somewhere there might be an
4 occurrence -- one or two of them in the wash,
5 along the wash?

6 MS. LUCKHARDT: You can't ask me
7 questions.

8 (Laughter.)

9 DR. BIAS: Well, I don't know for sure.

10 MS. LUCKHARDT: Okay. Okay. Isn't it
11 your contention that the Mojave ground squirrel
12 does not need a variety of plant species?

13 DR. BIAS: For what?

14 MS. LUCKHARDT: For it's lifecycle.

15 DR. BIAS: I can't answer that. Depends
16 on where you're at. Some of the areas that Phil
17 Leitner looked at had squirrels occurring and even
18 eating in areas that only had a couple plants.

19 So food that they're eating, they might
20 -- the can and have been eating only one or two
21 plants. But they might be living in areas where
22 more than two, but only eating two.

23 MS. LUCKHARDT: You quote on page 2 a
24 study by -- and I may totally mispronounce this
25 name, it's R-e-c-h-t, Recht?

1 DR. BIAS: Right.

2 MS. LUCKHARDT: 1977.

3 DR. BIAS: That's right.

4 MS. LUCKHARDT: And isn't it true, and
5 based on your testimony you're saying that it
6 reported that the species of plant selected by the
7 squirrel change throughout the season?

8 DR. BIAS: Correct. It was a -- Recht
9 showed a dietary shift, that they were switching
10 from one plant that they were eating solely, to
11 another plant later on in the season.

12 MS. LUCKHARDT: And on page 3 you
13 reference a study by Dr. Leitner. And you said
14 that fecal samples were dominated by a single food
15 source, is that correct?

16 DR. BIAS: I just cited his study. He
17 said that.

18 MS. LUCKHARDT: Then maybe I'm
19 misunderstanding your testimony.

20 DR. BIAS: I'm saying in that section
21 that Dr. Leitner studied food habits of Mojave
22 ground squirrel and found some that ate only a
23 single item of food.

24 HEARING OFFICER CELLI: And what exhibit
25 and page number was that?

1 MS. LUCKHARDT: I'm looking at exhibit,
2 I'm looking at Dr. Bias' testimony exhibit 632,
3 page 3.

4 HEARING OFFICER CELLI: Thank you.

5 MS. LUCKHARDT: Isn't it correct that a
6 fecal sample would show what one squirrel ate for
7 one day?

8 DR. BIAS: I don't know the passage
9 rates of the Mojave ground squirrels that he
10 looked at. Diets based on fecal analyses can be
11 pretty detailed. And there's a lot that needs to
12 be considered. How much they're eating; how
13 quickly they pass; water content of the material
14 they're eating; and how often they defecate.

15 MS. LUCKHARDT: But you're not saying
16 that you have, that you have your own knowledge
17 about how that happens --

18 DR. BIAS: No.

19 MS. LUCKHARDT: -- in a Mojave ground
20 squirrel?

21 DR. BIAS: No.

22 MS. LUCKHARDT: Okay. On pages 7 and 8
23 of your testimony you criticize reliance upon
24 trapping data, is that a correct understanding of
25 what you're saying there?

1 DR. BIAS: Yes, ma'am.

2 HEARING OFFICER CELLI: I'm just going
3 to make an observation that it's about almost five
4 minutes after 4:00. We've got a few witnesses to
5 go through it appears, so do you have any more
6 questions you have?

7 MS. LUCKHARDT: You know what, I think
8 I'll stop there. Thank you.

9 HEARING OFFICER CELLI: Thank you. And
10 staff's already crossed. So any redirect now of
11 Mr. Bias by CURE?

12 REDIRECT EXAMINATION

13 BY MS. GULESSERIAN:

14 Q When you were summarizing the staff's
15 conditions of certification and you referred to
16 their, and you referred to their language
17 regarding fully -- they are required to fully
18 mitigate for Mojave ground squirrel and desert
19 tortoise. Were you referring to the requirements
20 in the California Department of Fish and Game Code
21 which include the California Endangered Species
22 Act?

23 DR. BIAS: I was referring to the bio-11
24 condition, itself, that quotes project fully
25 mitigate for habitat loss and potential take of

1 desert tortoise and MGS.

2 MS. GULESSERIAN: Thank you.

3 DR. BIAS: And then Mojave ground
4 squirrel.

5 MS. GULESSERIAN: No further questions.

6 HEARING OFFICER CELLI: Recross by
7 staff?

8 MR. BABULA: No further.

9 HEARING OFFICER CELLI: Recross by
10 applicant?

11 MS. LUCKHARDT: No.

12 HEARING OFFICER CELLI: Thank you,
13 Mr. Bias. Your next witness, Ms. Gulesserian.

14 MS. GULESSERIAN: No further witnesses.

15 HEARING OFFICER CELLI: Thank you. I
16 guess we'll go with the staff next. Okay, he's
17 pointing over to applicant so I guess we'll go to
18 the applicant.

19 (Laughter.)

20 HEARING OFFICER CELLI: Okay.

21 Ms. Luckhardt.

22 MS. LUCKHARDT: Effectively pass the
23 buck.

24 HEARING OFFICER CELLI: Did you want to
25 proceed as a panel? Whatever makes most sense to

1 you. Obviously it's clearer on the record if
2 we're asking one witness one question and
3 everybody's going back and forth to one witness.

4 Unless you think it would be more
5 efficient to go by way of a panel.

6 MS. LUCKHARDT: I have them as a panel.

7 There was some cross-over work between some of
8 the witnesses, and so it may be important to have
9 them go as a panel, just because of the work that
10 was done --

11 HEARING OFFICER CELLI: That's fine.

12 MS. LUCKHARDT: And how it was done.

13 HEARING OFFICER CELLI: We can do that.

14 And my request to you and to -- so each of the
15 panel members, please remember to state your name
16 prior to any answer that you give.

17 And then, attorneys, if you would please
18 direct specific questions to specific witnesses.
19 In this way we can keep the record clear as to
20 who's saying what, who's responding to what
21 question.

22 So, with that, go ahead, Ms. Luckhardt.

23 MS. LUCKHARDT: Okay, and at this point
24 I'm going to generally dispense with the usual
25 formalities of are your qualifications attached to

1 an exhibit, or do you want me to go through that?

2 HEARING OFFICER CELLI: You don't need
3 to. I think that we had the discussion here about
4 the qualifications of these witnesses. We have
5 everybody's résumé on file, do we not? They're
6 all in the record.

7 MS. LUCKHARDT: Yes, you do.

8 HEARING OFFICER CELLI: It's been
9 received. So, everybody is an expert in whatever
10 they're an expert in.

11 MS. LUCKHARDT: Okay. Then what I'd
12 like to do is have Mr. Stein provide just a quick
13 overview of the project and its components, since
14 there's been some discussion about water pipelines
15 and different things like that, to get you
16 oriented on the project and the different areas.
17 So that when we talk about surveys you'll
18 understand where we're talking about.

19 HEARING OFFICER CELLI: So this is a
20 brief overview?

21 MS. LUCKHARDT: This is a --

22 MR. STEIN: Extremely brief.

23 HEARING OFFICER CELLI: Very good.

24 MS. LUCKHARDT: Brief overview. And
25 what you are looking at is, Mike, is that --

1 HEARING OFFICER CELLI: I know I've seen
2 this before.

3 MS. LUCKHARDT: It is, it's the --

4 HEARING OFFICER CELLI: In the AFC.

5 MS. LUCKHARDT: It's from a spring
6 survey report. Okay, it's exhibit 87, and the
7 figure number -- figure 2.

8 DIRECT EXAMINATION

9 MR. STEIN: Okay, well, Kenny Stein. I
10 agree, we shouldn't really have to spend too much
11 time on biology. We think that there really
12 aren't any biological issues with the project.

13 A reminder that here's the outline of
14 the plant site. The entire 2012-acre site is
15 highly disturbed from previous farming activities.

16 You all saw some of the photographs from the
17 earlier visual presentation.

18 And it's also got quite a bit of
19 disturbance in the general area. You've got the
20 Honda Test Track over here. You've got Highway 14
21 coming along here. And you've got a transmission
22 line corridor here.

23 Just generally speaking, so that we're
24 all oriented to the site, again the plant site's
25 here; the transmission line runs down here. This

1 is the interconnection to the Barren Ridge
2 Substation.

3 Here is, you can't see the whole thing,
4 but this is where we had surveyed for a gas
5 pipeline, but it's now where the water pipeline to
6 California City would come from.

7 If you could, Mike, go to the next
8 figure. Just, again, --

9 MS. LUCKHARDT: And when you say survey,
10 are you referring to protocol desert tortoise
11 surveys?

12 MR. STEIN: Yes, all protocol desert
13 tortoise surveys. It's not a pristine desert
14 environment. You've heard that before. It's
15 exactly the type of site that the resource
16 agencies have been encouraging solar development
17 on.

18 As we put in the record, we've got
19 preeminent experts here that you'll hear from,
20 that have concluded that the entire plant site is
21 not suitable habitat for any listed species,
22 including desert tortoise or the Mojave ground
23 squirrel. And the resource agencies have done
24 their own independent analysis and have concurred
25 with that.

1 I'd like to point out that in the two
2 years of these proceedings there hasn't been a
3 single environmental group that has, that has
4 commented that the assessment for biological
5 resources has been in any way inadequate, or the
6 mitigation proposed is inadequate.

7 So, with that, I'll turn it back over.

8 MS. LUCKHARDT: Okay, great, thank you
9 very much. And turning to Dr. Leitner. Your role
10 in this project has been to focus on the impacts
11 to the Mojave ground squirrel, is that correct?

12 DR. LEITNER: Yes, that's correct. Have
13 I got this close enough?

14 HEARING OFFICER CELLI: Yes, you do.

15 (Laughter.)

16 DR. LEITNER: Okay.

17 MS. LUCKHARDT: Excellent. And just
18 quickly, how long have you been studying the
19 Mojave ground squirrel?

20 DR. LEITNER: Well, the best I can
21 recollect, in May it will be 31 years.

22 MS. LUCKHARDT: Thank you. And
23 you're --

24 HEARING OFFICER CELLI: That's about as
25 much as we need to know about this expert's

1 expertise.

2 DR. LEITNER: Okay.

3 HEARING OFFICER CELLI: Let's move on.

4 MS. LUCKHARDT: Can you describe the
5 basic biology and lifecycle of the Mojave ground
6 squirrel?

7 DR. LEITNER: Yeah, I'll try to keep
8 this brief, but it's an unusual animal and some of
9 the features of its lifecycle, I think, are
10 relevant to understanding why the plant site is
11 not suitable habitat for it.

12 They spend about half of the year
13 underground sleeping. They come out in early
14 spring, February. Mate in late February. The
15 young are born end of March, early April. The
16 females are lactating and supporting the young
17 until about early May. The young become
18 independent toward the end of May. And many of
19 them actually disperse, go off to seek their
20 fortune elsewhere, and can move some distance, up
21 to several kilometers from where they're born.

22 At that point everybody has to start
23 putting on weight. They may double their body
24 weight so that they have enough fat stored up to
25 get through the next six months. By the middle of

1 summer most of them are asleep, underground in
2 their burrows.

3 And one of the reasons, only one of the
4 reasons that this plant site, even areas where
5 there are some saltbush plants that have regrown
6 after the alfalfa farming was discontinued, even
7 in those areas where there are some shrubs, the
8 habitat does not really provide the food resources
9 that the animals need.

10 Since they're coming out in early
11 spring, in February, the herbaceous plants are not
12 up yet. And they're not available as food. And
13 so shrub foliage, particular species of shrubs are
14 important to get the animals going.

15 After a good rainfall winter the annuals
16 begin coming up later in March; and they reach a
17 peak in April. And at that time when the females
18 are supporting the young, lactating, they have
19 maximum caloric needs and needs for moisture.
20 They rely on these herbaceous plants, native
21 plants that, you know, we think of as the desert
22 wildflowers.

23 In May, as it gets hotter, those annual
24 plants begin to dry up and the squirrels have to
25 go back to feeding on shrub foliage and the seeds

1 that they can obtain.

2 So in order for a site to support a
3 population it's got to have a variety of different
4 plants that will provide for the squirrels through
5 the season.

6 And the study, for example, by Dr.
7 Recht, where he observed them feeding on shrub
8 leaf early in the season, then turning to
9 wildflowers, basically corroborates my view. His
10 study was based on watching squirrels and seeing
11 what they ate. And may have missed something, but
12 the basic pattern is the same that I've found
13 through these microscopic studies of what comes
14 through after the squirrels have eaten.

15 So, that's the basic features of the
16 lifecycle and kind of indicates why you need a
17 site to support these animals that has a variety
18 of native plant species.

19 Even the shrub area on the Beacon site
20 has got one species of saltbush and a couple of
21 invasive exotic annual plants, biliary and
22 Mediterranean grass, and it really does not
23 provide the variety of food resources that would
24 be needed to support a population.

25 On the other hand, we saw the map that

1 showed the transmission line corridor west of
2 highway 14. And that area is creosote bush scrub,
3 relatively undisturbed. And it supports a variety
4 of shrubs and native herbaceous plants.

5 And when I did my habitat assessment I
6 found the features there that would support the
7 species; and I recommended that the applicant
8 assume that the species was present there.

9 On the plant site, itself, my evaluation
10 was that it did not have the resources necessary
11 to support the species.

12 MS. LUCKHARDT: Thank you. And Dr. Bias
13 mentions a requirement that is based upon a 2003
14 California Department of Fish and Game document
15 for conducting Mojave ground squirrel surveys and
16 the habitat definitions.

17 You didn't recommend surveys for this
18 site. Is it required under that 2003 California
19 Department of Fish and Game?

20 DR. LEITNER: Again, I think it's
21 important to consider the transmission line
22 corridor portion of the project site that's west
23 of 14. In that situation the habitat there was
24 Mojave creosote bush scrub. If the applicant had
25 not chosen to assume presence, then surveys would

1 have been required.

2 However, the plant site, most of it is
3 barren. There's no vegetation to speak of at all.

4 There's a part that supports some saltbush
5 plants, and that is not a natural community. It's
6 not the Mojave saltbush scrub as described in the
7 guidelines. And it's simply not a natural
8 community and would not require surveys.

9 MS. LUCKHARDT: And those guidelines
10 refer to habitat definitions. Does the plant site
11 meet that habitat definition?

12 DR. LEITNER: No, it does not. Even the
13 part that has regrowth of saltbush, if you look at
14 the publication by Holland 1986 that's cited in
15 the guidelines, you look at the way that Holland
16 describes Mojave saltbush scrub, this says, okay,
17 maybe strongly dominated by saltbush species, but
18 then lists a large number of other native species
19 that would be expected to occur, they aren't there
20 on the plant site in that saltbush area.

21 MS. LUCKHARDT: So it's your conclusion
22 that the habitat that's described by Holland and
23 referenced in the 2003 guidelines is not present
24 on the plant site?

25 DR. LEITNER: That's correct. I've been

1 a member of the Technical Advisory Group that
2 makes recommendations to the Department of Fish
3 and Game regarding the species since the Technical
4 Advisory Group was formed about ten years ago. I
5 was involved in the 2003 revision of the
6 guidelines, and we've never had any concept that
7 anybody would try to describe vegetation such as
8 occurs on the plant site as being native desert
9 scrub that would need to be surveyed.

10 MS. LUCKHARDT: And are you aware of
11 trapping studies on abandoned ag land?

12 DR. LEITNER: Yes. The sort of saltbush
13 regrowth that you find on part of the Beacon site
14 is pretty typical for areas in the western Mojave
15 that have been used for production of alfalfa and
16 then abandoned.

17 And there have been some protocol
18 trapping studies for Mojave ground squirrel in
19 these areas. I'm aware of at least three areas
20 where that has been done. In all three cases
21 Mojave ground squirrel are known to occur within a
22 few miles of those sites in native scrub
23 vegetation. But no one has yet trapped a Mojave
24 ground squirrel in that kind of vegetation.

25 MS. LUCKHARDT: And what about the

1 studies that Dr. Bias refers to from Ardal and
2 Roush and Westman to demonstrate that the Mojave
3 ground squirrel have been found in areas dominated
4 by atroplex?

5 DR. LEITNER: Yeah, atroplex or
6 saltbush. Yeah, those trapping studies, some of
7 them were conducted on sites that were described
8 as saltbush scrub. And Mojave ground squirrels
9 were trapped.

10 However, for example I've been, within
11 the last month, I think it was March 2nd, I was at
12 two of the Ardal and Roush saltbush sites in
13 Superior Valley north of Barstow taking some
14 people from USGS out to look at habitat where
15 Mojave ground squirrels occur.

16 We got out of the truck, walked around.
17 And within five minutes we had found at least
18 half a dozen other species of native shrubs,
19 including ones winterfat and spiny hop-sage that
20 are favored by Mojave ground squirrels.

21 So, although the site was described as
22 saltbush scrub, it was, in fact, a diverse
23 community dominated by saltbush. And you do find
24 Mojave ground squirrels in those areas.

25 But that has nothing to do with this

1 vegetation that occurs on the site.

2 By the way, I also trapped the same
3 Ardal and Roush sites in 2002, caught Mojave
4 ground squirrels there. But that's real native,
5 undisturbed saltbush scrub.

6 MS. LUCKHARDT: And, Dr. Leitner, in
7 your opinion from the perspective of Mojave ground
8 squirrel conservation, is this a good site for
9 solar development in the desert?

10 DR. LEITNER: Well, as some of the folks
11 in this room know, for several years I have been
12 attempting to persuade anyone who would listen,
13 and even if they don't listen I'll still say it,
14 persuade folks that the most appropriate places
15 for solar development in the Mojave Desert are
16 sites like the Beacon site that have been
17 previously disturbed.

18 There's a lot of former ag land like
19 this. I think this is really, you know, we need
20 solar energy. But we also need to minimize the
21 impact to native species, native ecosystems. And
22 this is the ideal way to do it, in my opinion.

23 MS. LUCKHARDT: And in your opinion is
24 the proposed 100 acres for the plant site, not the
25 whole 115 including the transmission line, but the

1 100 acres for the plant site sufficient to
2 mitigate for plant site impacts to Mojave ground
3 squirrel?

4 DR. LEITNER: Yes, I believe it's quite
5 a generous approach to mitigation. Because I
6 mentioned that young ground squirrels can disperse
7 from where they're born, they can wind up in
8 places where they're just passing through; they're
9 transient.

10 And because there is habitat adjoining
11 the site that could possibly support a population,
12 you could have young animals temporarily moving
13 through the site. And there's a very small
14 possibility that take could occur.

15 So while we could have said, well, this
16 is not habitat, doesn't support Mojave ground
17 squirrels, therefore no mitigation is required.
18 Instead we decided to take account of the
19 possibility that there could be a small amount of
20 incidental take. And then tried to work out a way
21 to mitigate for that.

22 And so I believe it's reasonable to
23 assume that those 100 acres could support actual
24 reproductive population, not just transients, but
25 could actually benefit the species to a great

1 extent, and more than fully compensate for loss of
2 one or two individuals.

3 MS. LUCKHARDT: Thank you. And turning
4 to Dr. Karl --

5 HEARING OFFICER CELLI: You know, I
6 wonder if it's appropriate to give the parties an
7 opportunity to cross Dr. Leitner at this time
8 or --

9 MS. LUCKHARDT: That's fine.

10 HEARING OFFICER CELLI: Just to kind of
11 put closure on that testimony, I just think --

12 MS. LUCKHARDT: The Mojave ground
13 squirrel? Good.

14 HEARING OFFICER CELLI: Yeah. Ms.
15 Gulesserian, any cross of Dr. Leitner?

16 MS. GULESSERIAN: Yes, I have cross, and
17 just contemplating the presentation of the panel
18 while crossing them individually.

19 HEARING OFFICER CELLI: I thought since
20 he's spoken at such length that I would, before we
21 lose it.

22 MS. GULESSERIAN: Yeah, it's true. I
23 think I will not be able to conclude my cross. I
24 might have an additional question after I hear
25 from their --

1 HEARING OFFICER CELLI: We'll come
2 around.

3 CROSS-EXAMINATION

4 BY MS. GULESSERIAN:

5 Q Dr. Leitner, is it true that the
6 California Department of Fish and Game Mojave
7 ground squirrel guidelines require a survey to be
8 undertaken for Mojave ground squirrel on a project
9 site if the proposed site has potential habitat of
10 this species, and the presence of the species on
11 the site is unknown?

12 MS. LUCKHARDT: Can you please refer to
13 the exhibit number of that document so he can have
14 it in front of him.

15 HEARING OFFICER CELLI: Also you may
16 want to break that up into bite-size pieces.
17 There were about three questions there.

18 MS. GULESSERIAN: He has testified about
19 the Mojave ground squirrel guidelines and when
20 they require --

21 MS. LUCKHARDT: And I believe that
22 you've got it in one of your exhibits and I just
23 would like to have that out in front of him.

24 HEARING OFFICER CELLI: We have a
25 representative from CDFG who can probably blurt it

1 right out.

2 MS. GULESSERIAN: Exhibit 603.

3 HEARING OFFICER CELLI: We're looking
4 for the guidelines?

5 MS. GULESSERIAN: It's exhibit 603.

6 MS. LUCKHARDT: Okay, we've got it,
7 thank you.

8 MS. GULESSERIAN: Okay.

9 MS. LUCKHARDT: It's exhibit 603.

10 MS. GULESSERIAN: Is it true?

11 DR. LEITNER: Could you restate the
12 question, please.

13 MS. GULESSERIAN: Sure. Do the
14 guidelines require surveys to be undertaken for
15 Mojave ground squirrel if there's potential
16 habitat on the site?

17 DR. LEITNER: If there is potential
18 habitat and it's within the range of the squirrel,
19 then surveys are required. However, the applicant
20 has the option of assuming presence.

21 MS. GULESSERIAN: Okay. And in this
22 case did the applicant assume presence?

23 DR. LEITNER: The applicant assumed
24 presence on the area, the transmission west of
25 Highway 14, where there was potential habitat.

1 MS. GULESSERIAN: So did they assume
2 presence on the project site?

3 DR. LEITNER: No.

4 MS. GULESSERIAN: Okay, so is it also
5 true that potential habitat is defined as land
6 supporting desert shrub vegetation within or
7 adjacent to the geographic range of the species?

8 DR. LEITNER: Yes.

9 MS. GULESSERIAN: Is it true that a
10 project is an action that results in temporary or
11 permanent removal or degradation of potential
12 habitat?

13 DR. LEITNER: That's what it says.

14 MS. GULESSERIAN: Okay. Is it true that
15 no surveys were done because you've suggested the
16 site has no potential habitat?

17 DR. LEITNER: The site, that is correct,
18 the site does not have potential habitat for the
19 species.

20 MS. GULESSERIAN: Okay, so surveys were
21 just --

22 DR. LEITNER: That's the power plant
23 site.

24 MS. GULESSERIAN: We've eliminated
25 surveys from this project site based on just

1 saying there's no potential habitat on the site?
2 That's what happened?

3 DR. LEITNER: Based upon habitat
4 assessment.

5 MS. GULESSERIAN: Okay. You talked
6 about, in your presentation, that potential
7 habitat is defined by Fish and Game as land
8 supporting desert shrub vegetation within or
9 adjacent to the geographic range of the species.

10 And then you went on to further define
11 what desert shrub vegetation by referring to
12 Holland and Knight?

13 DR. LEITNER: Yes. In the guidelines
14 there's a footnote --

15 MS. GULESSERIAN: Um-hum.

16 DR. LEITNER: -- that gives the names of
17 three different desert scrub communities, and
18 refers to Holland, 1986, as the source. So if you
19 want to know what those are then you need to look
20 in Holland.

21 MS. GULESSERIAN: Okay. And what did
22 you -- can you refresh our memory on what you said
23 that Holland said about the desert shrub
24 vegetation.

25 DR. LEITNER: Well, the footnote in the

1 guidelines mentions Mojave saltbush scrub
2 vegetation. And if you look in Holland the
3 description, it gives the soils, et cetera, et
4 cetera, and then lists a number of species of
5 plants that typically occur in that vegetation, in
6 that community type. Okay?

7 MS. GULESSERIAN: Um-hum. Okay, and is
8 it your conclusion that based on that further
9 definition of desert shrub vegetation that there
10 is no desert shrub vegetation on the site?

11 DR. LEITNER: There is no native --
12 there is one species of saltbush that occurs on
13 the site. The other species that you would expect
14 to find in a natural desert saltbush scrub
15 community are not present on the power plant site.

16 MS. GULESSERIAN: Did the Mojave ground
17 squirrel guidelines distinguish between natural
18 and unnatural?

19 DR. LEITNER: Well, the description --

20 MS. GULESSERIAN: I'm asking this
21 witness --

22 DR. LEITNER: Yeah, yeah, they --

23 MS. GULESSERIAN: -- Mr. Leitner,
24 please.

25 DR. LEITNER: The description, the

1 footnote indicates that if you want to know
2 whether you're dealing with one of these native
3 plant communities, designated plant communities,
4 you should look at the description in Holland and
5 see if it fits.

6 And as I say, when we were drafting this
7 revision it never occurred to any of us on the
8 Technical Advisory Group that regrowth, a stand of
9 one species that's known to -- one species of
10 native shrub that's known to grow on the sites
11 that are disturbed, that that could be considered
12 a natural community. It just doesn't make sense.

13 A community consists of a number of
14 species of plants and animals that occur together.

15 This doesn't answer that. The areas with
16 saltbush on the site don't fit that definition.

17 MS. GULESSERIAN: Okay, so we're talking
18 about community now, but isn't it true that the
19 Mojave ground squirrel guidelines say potential
20 habitat is the desert shrub vegetation.

21 MS. LUCKHARDT: I think this has been
22 asked and answered. I think he's clearly
23 explained --

24 HEARING OFFICER CELLI: Sustained.

25 MS. GULESSERIAN: Are you aware that the

1 Holland publication describes the desert saltbush
2 scrub community as having low total groundcover
3 with much bare ground between the widely spaced
4 shrubs?

5 DR. LEITNER: Yes.

6 MS. GULESSERIAN: Are you -- okay,
7 thank you. Are you aware that staff found the
8 project site contains 429.5 acres of Mojave Desert
9 wash scrub and atroplex scrub?

10 MS. LUCKHARDT: Are you asking about the
11 final staff assessment or his assessment?

12 MS. GULESSERIAN: I'm asking him whether
13 he's aware that the final staff assessment finds
14 that the project site contains 429.5 acres of
15 Mojave Desert wash scrub and agricultural
16 disturbed atroplex scrub.

17 MS. LUCKHARDT: Can you cite to the
18 final staff assessment so we can have him look at
19 where that appears?

20 MS. GULESSERIAN: I don't have a
21 computer.

22 HEARING OFFICER CELLI: Well, the
23 question is is he aware of that.

24 MS. LUCKHARDT: Okay.

25 HEARING OFFICER CELLI: And so I think

1 that's fair enough. The witness can testify as to
2 whether he's aware of the FSA's statement, if
3 there is, of how many acres of, what is it,
4 atroplex and the other kind? What was the other
5 part of that question? It was really two.

6 MS. GULESSERIAN: It's 429.5 acres of
7 Mojave Desert wash scrub and agricultural
8 dispersed atroplex scrub on the site.

9 HEARING OFFICER CELLI: And we
10 determined that the atroplex is really saltbush
11 scrub.

12 MS. SPEAKER: Synonymous.

13 HEARING OFFICER CELLI: It's the same
14 thing, thank you.

15 (Pause.)

16 HEARING OFFICER CELLI: So the question
17 remains whether Dr. Leitner is aware that the FSA
18 contains --

19 DR. LEITNER: Yes, I am aware --

20 HEARING OFFICER CELLI: Okay.

21 DR. LEITNER: -- of that.

22 MS. GULESSERIAN: Did you do a
23 quantitative assessment of this vegetation?

24 DR. LEITNER: No, I did not do a
25 quantitative assessment, if by that you mean

1 counting the number of saltbush individuals that
2 were present on the site.

3 MS. GULESSERIAN: Did you map general
4 areas or do anything other, any other type of
5 quantitative assessment of the vegetation?

6 DR. LEITNER: Maps of the vegetation
7 types were prepared, and I had input into the
8 boundaries to try to get them correct.

9 MS. GULESSERIAN: And where are your
10 maps that we can refer to?

11 DR. LEITNER: The maps that were
12 produced, I'm not sure what, what exhibit that
13 would be.

14 HEARING OFFICER CELLI: Would those be
15 the maps in the FSA we're talking about or the
16 AFC?

17 MR. SOLORIO: Both. They're cited in
18 the FSA as part of the AFC.

19 HEARING OFFICER CELLI: Okay. So,
20 Ms. Gulesserian, do you know what we're talking
21 about here? The maps that contain, you know,
22 little points of what bushes and where things are
23 and what density.

24 (Parties speaking simultaneously.)

25 MS. GULESSERIAN: Okay, we can just move

1 on.

2 HEARING OFFICER CELLI: Thank you. I'm
3 noticing it's 20 to 5:00.

4 (Parties speaking simultaneously.)

5 MS. GULESSERIAN: When you say shrub
6 communities do not have, when you say shrub
7 communities do no have appropriate variety of
8 native shrubs in cores needed to support Mojave
9 ground squirrel, did you do a quantitative
10 assessment so that your assessment can be reviewed
11 or verified?

12 DR. LEITNER: Anyone can go to the site.
13 I was there a few days ago. And you can walk
14 through the site and you will see all scale
15 saltbush shrubs; you will also see that almost the
16 entire herbaceous component consisting of plants
17 about half an inch tall, are these two invasive
18 species, the grass, Mediterranean grass and the
19 biliary or erodium.

20 So there is no problem. Anyone with
21 eyes can go to the site and see what plants are
22 there. So it's repeatable.

23 MS. GULESSERIAN: Is the site public or
24 private property?

25 DR. LEITNER: It's private.

1 MS. GULESSERIAN: Okay. So when you are
2 -- so is the answer it's based on visual surveys
3 and your testimony today, rather than a
4 quantitative assessment of the native shrubs?

5 DR. LEITNER: That's correct. There's
6 only one species of shrub there. And there are a
7 couple of species of invasive herbaceous weeds.
8 Not to be derogatory.

9 MS. GULESSERIAN: In your testimony --
10 sorry, excuse me. In doing your analysis isn't it
11 true that your one-day site visit occurred in
12 August, and another one-day site visit in October?

13 DR. LEITNER: That's correct.

14 MS. GULESSERIAN: And excuse me one
15 moment. Is it correct that these dates are
16 outside of the timeframe for visually surveying
17 for Mojave ground squirrel?

18 DR. LEITNER: My objective in visiting
19 the site was not to look for Mojave ground
20 squirrels. For one thing, visual surveys are,
21 even in the season when the animals are active,
22 are almost never effective. You don't see them
23 because they see you before you see them and get
24 away.

25 My purpose in going to the site on those

1 two occasions was to assess the habitat.

2 MS. GULESSERIAN: Are you familiar with
3 California Department of Fish and Game guidelines
4 which state that if a survey is conducted
5 according to these guidelines resulting in no
6 capture or observation of Mojave ground squirrel
7 that is not necessarily evidence that Mojave
8 ground squirrels do not exist, or that the site is
9 not actual or potential habitat?

10 DR. LEITNER: I'm aware of that, but
11 it's only a partial quote. You left out the rest
12 of it which states that however, the Department
13 will stipulate, for our purposes, that there ain't
14 any squirrels there.

15 Well, not exactly that language, but.

16 MS. LUCKHARDT: If you'd like the exact
17 language if you could point me to where your
18 original quote is, we can read it into the record.

19 HEARING OFFICER CELLI: Or you'll brief
20 it later.

21 MS. GULESSERIAN: In your rebuttal you
22 state that there is no document in relationship
23 between percent shrub cover and presence, absence
24 of Mojave ground squirrel, is that correct?

25 DR. LEITNER: That is correct.

1 MS. GULESSERIAN: You state that the
2 relevant habitat variable is evidently not shrub
3 cover, but the right combination of suitable
4 native plant species.

5 DR. LEITNER: Yes, that's correct, I've
6 said that.

7 MS. GULESSERIAN: Are you familiar with
8 Scott Cashen's testimony that plant species common
9 in squirrels' diets were detected on the project
10 site, and that four of them comprised major food
11 sources for Mojave ground squirrel?

12 MS. LUCKHARDT: And can you point to
13 where that is in Mr. Cashen's testimony so we can
14 have that available for him to review?

15 (Pause.)

16 HEARING OFFICER CELLI: While he's
17 looking that up, Ms. Gulesserian, let's seen what
18 you can do to shorten your list.

19 MS. LUCKHARDT: Okay, we've got it.

20 MS. GULESSERIAN: You found it? Okay.

21 DR. LEITNER: Okay, yes, I'm looking at
22 it.

23 MS. GULESSERIAN: You're familiar with
24 that?

25 DR. LEITNER: Yes. I am, however, could

1 I --

2 MS. GULESSERIAN: Right, you said in
3 your rebuttal that you responded that the presence
4 of certain plant species is irrelevant to any
5 evaluation of habitat suitability, is that
6 correct?

7 MS. LUCKHARDT: Where is that exactly in
8 his testimony?

9 MS. GULESSERIAN: In his rebuttal
10 testimony?

11 MS. LUCKHARDT: Yeah, if you're going to
12 quote from it, I want to have it in front of him.

13 HEARING OFFICER CELLI: You know, as a
14 general rule when you're going to cross-examine
15 someone and you're going to use the transcripts or
16 whatever, you should have that at the ready. That
17 does make for a smoother hearing.

18 (Pause.)

19 MS. GULESSERIAN: It's page 5 of your
20 rebuttal testimony, answer 13.

21 HEARING OFFICER CELLI: And what exhibit
22 is that?

23 MS. GULESSERIAN: Exhibit 27, 327.

24 HEARING OFFICER CELLI: 327, page?

25 MS. GULESSERIAN: Page 5, answer 13.

1 HEARING OFFICER CELLI: Thank you.

2 DR. LEITNER: Counsel, with your
3 permission could I attempt to clarify something
4 however.

5 You quoted the statement that goes for
6 plant species that were found by Recht to form
7 food resource, were found on the project site, is
8 that correct? I'm just asking for clarification.

9 MS. GULESSERIAN: Yes. I said are you
10 familiar with Scott Cashen's testimony that plant
11 species common in squirrels' diets were detected
12 on the project site, and that four of them
13 comprised major food sources.

14 DR. LEITNER: Yes, okay. So, I'm aware
15 of that, but if I could point out the project site
16 includes the transmission corridors, which are
17 natural habitat and have a great variety of plant
18 species.

19 So what we're really talking about is
20 habitat conditions on the plant site where the
21 number of plant species present is very small.
22 And, for example, one of the shrub species
23 mentioned by Recht, (indiscernible), I did not see
24 that. I've been all over the plant site, I did
25 not see that species there.

1 When I was at the plant site a few days
2 ago I did not see coreopsis there. So there may
3 be some confusion. Those species may occur to the
4 west of 14, which is clearly potential Mojave
5 ground squirrel habitat.

6 HEARING OFFICER CELLI: Do you have more
7 cross?

8 MS. GULESSERIAN: Yes. I need my expert
9 here.

10 So in your response to Mr. Cashen's
11 testimony that's been adopted by Dr. Bias, you
12 state that the presence of plant species is
13 irrelevant to any evaluation of habitat
14 suitability, is that correct? In answer number
15 13.

16 DR. LEITNER: Thirteen, okay.

17 MS. GULESSERIAN: There is no evidence
18 that such vegetation could support the Mojave
19 ground squirrel population. The conclusions of
20 Recht were based on visual observations of feeding
21 behavior and not on actual quantitative analysis
22 of the complete diet. In any event, the presence
23 of certain plant species within the project survey
24 area is irrelevant to any evaluation of habitat
25 suitability on the plant site. Is that what you

1 said?

2 DR. LEITNER: That is correct.

3 MS. GULESSERIAN: Okay.

4 DR. LEITNER: Can I give an explanation
5 or would that be okay? What I was getting at was
6 the fact that a particular plant, an individual
7 plant, might have been found, is not the issue.
8 The question is the availability of adequate
9 amounts of different plant species that are
10 required.

11 So that fact that you've got one
12 individual of coreopsis doesn't make it habitat.

13 MS. GULESSERIAN: Is it true that, okay,
14 we're going to move on to bio, condition bio-11,
15 which is in the final staff assessment. Requires
16 compensation for five acres of lost desert shrub
17 vegetation at a three-to-one ratio or 15 acres of
18 compensation land for the transmission line.

19 MS. LUCKHARDT: Now where are you
20 looking at in bio-11 so I can get him to the right
21 spot? These are really long conditions.

22 MS. GULESSERIAN: Bio-11.

23 HEARING OFFICER CELLI: I'm looking at
24 the new, the latest, which was exhibit 338, which
25 contains bio-11 desert tortoise and Mojave ground

1 squirrel compensatory mitigation. And it's
2 referring to 115 acres of land. Is that what
3 we're talking about? That's at page --

4 MS. LUCKHARDT: Yeah, I have the
5 condition. I'm just not sure which portion of it
6 she is referring to with her question.

7 MS. GULESSERIAN: Okay, let me rephrase.
8 Is it your understanding that the final staff
9 assessment is requiring compensation for five
10 acres of lost desert shrub vegetation on the
11 transmission line?

12 DR. LEITNER: Yes, that's my
13 understanding.

14 MS. GULESSERIAN: Okay, and it's
15 requiring compensation at a three-to-one ratio for
16 five acres of lost desert shrub vegetation?

17 DR. LEITNER: On the transmission line
18 corridors, yes, that's my understanding.

19 MS. GULESSERIAN: In your testimony you
20 stated, according to the best dietary information
21 available Mojave ground squirrels require forage
22 from a variety of native shrubs and herbaceous
23 species to sustain them through the active season.

24 MS. LUCKHARDT: Again, where are you
25 reading from? Rebuttal?

1 MS. GULESSERIAN: In his testimony.

2 Sorry about the page, I apologize.

3 HEARING OFFICER CELLI: Is that exhibit
4 327?

5 MS. LUCKHARDT: I've got 327.

6 MS. GULESSERIAN: Do you agree that
7 according to the best dietary information
8 available Mojave ground squirrels require forage
9 from a variety of native shrub and herbaceous
10 species to sustain them through their active
11 season?

12 DR. LEITNER: Yes, I would agree with
13 that.

14 MS. GULESSERIAN: What would you mean by
15 the word sustain?

16 DR. LEITNER: Provide sufficient
17 calories, nutrients, moisture so that they could
18 survive, produce young and put on enough fat to
19 get through the dormant period.

20 MS. GULESSERIAN: And when you say a
21 variety of native shrub, what do you mean by
22 variety?

23 MS. LUCKHARDT: I think that's been
24 asked and answered.

25 HEARING OFFICER CELLI: I agree. I

1 think that I'll sustain that objection.

2 MS. GULESSERIAN: Has there ever been a
3 study that scientifically tested whether a variety
4 of shrubs and herbaceous species are required to
5 sustain Mojave ground squirrel?

6 DR. LEITNER: I'm not sure that I
7 understand your question. What type of study are
8 you -- what sort of study are you envisioning?

9 MS. GULESSERIAN: Okay, maybe we need to
10 find your statement in your testimony, because
11 according to your testimony you stated, according
12 to the best dietary information available, Mojave
13 ground squirrels require forage from a variety.

14 I'm wondering if you are referring to
15 some sort of scientifically tested study, or what
16 the basis is for that statement.

17 DR. LEITNER: The basis for that
18 statement is, well, there's several things. But
19 the main basis for that statement would be the
20 study that was conducted at four sites in the Coso
21 range over a period from 1998 to '96 (sic) where
22 samples were taken and analyzed to determine what
23 males and females, adults and juveniles were
24 feeding on in wet years, dry years, spring,
25 summer.

1 So a picture of -- this is the best in
2 the sense that it covers multiple years, covers
3 different seasons, different groups of animals,
4 different study sites.

5 So, yeah, that's --

6 MS. GULESSERIAN: Can you tell me where
7 the -- sorry, were you finished?

8 DR. LEITNER: Yes, I had.

9 MS. GULESSERIAN: -- where the Coso
10 Range is in relation to the geographic range of
11 the Mojave ground squirrel?

12 DR. LEITNER: It's toward the northern
13 edge of the range. It's in Inyo County about 30
14 miles north of Ridgecrest.

15 MS. GULESSERIAN: Did you conduct or
16 participate in the five-year status review for the
17 Mojave ground squirrel in 2008?

18 DR. LEITNER: Five-year status review in
19 2008?

20 MS. GULESSERIAN: Have you done any
21 status reviews for the Mojave ground squirrels?

22 DR. LEITNER: Are you -- this is --
23 you're referring to a document that was produced
24 by -- status review -- I'm not sure what document
25 you're talking about. Or if it is a document or

1 if --

2 MR. BABULA: We're only at squirrels.
3 Is there a way we could move this a little bit
4 forward?

5 HEARING OFFICER CELLI: Yeah, it's now
6 5:00. And I wonder, Ms. Gulesserian, how much
7 more cross do you have on the squirrels?

8 MS. GULESSERIAN: The squirrels are
9 important. I just have one --

10 HEARING OFFICER CELLI: I don't question
11 that.

12 MS. GULESSERIAN: -- question based on
13 this study. And I do apologize for not citing
14 throughout my questions. I thought we'd be more
15 readily familiar, but --

16 HEARING OFFICER CELLI: You know, a
17 status review that you're looking, you're looking
18 for a status review.

19 MS. GULESSERIAN: Thank you.

20 HEARING OFFICER CELLI: If you can just
21 give him exactly what it is.

22 MS. GULESSERIAN: Leitner, P., 2008,
23 current status of the Mojave ground squirrel.

24 DR. LEITNER: Oh, that status review. I
25 thought perhaps Fish and Game had produced a

1 status review. Okay, I'm familiar with that.

2 MS. GULESSERIAN: Familiar with that --

3 DR. LEITNER: Yes.

4 MS. GULESSERIAN: -- status review?

5 DR. LEITNER: Right, yes.

6 MS. GULESSERIAN: Okay. In that status
7 review did you state, it is clear that additional
8 field surveys are urgently needed to provide a
9 more comprehensive picture of Mojave ground
10 squirrel occurrence and status throughout its
11 range.

12 It is also clear that surveys to date
13 have been seriously inadequate in documenting
14 patterns of Mojave ground squirrel distribution
15 because trapping sites have, for the most part,
16 not been selected according to a randomized
17 scheme.

18 In the absence of a randomized sampling
19 procedure the results of such surveys apply only
20 to the trapping site and cannot be extrapolated to
21 the general region.

22 Is that what you wrote in your status
23 review?

24 MS. LUCKHARDT: Would you like to see
25 the document and the location of where that is

1 before you respond? Or do you --

2 DR. LEITNER: No.

3 MS. LUCKHARDT: Okay.

4 DR. LEITNER: It sounds very familiar.
5 In other words, my answer is yes, I am familiar
6 with that.

7 MS. GULESSERIAN: So by using that Coso
8 data to support your conclusion that the Beacon
9 site does not provide food sources, not just
10 necessary to sustain Mojave ground squirrel,
11 aren't you doing the thing that you cautioned
12 against in the status review?

13 DR. LEITNER: Well, no. In the status
14 review I was not talking about diet. I was rather
15 talking about getting a complete picture of the
16 distribution and abundance of the squirrel
17 throughout its range.

18 What I said about the dietary data that
19 we have from the Coso study is that it's the best
20 available.

21 And it's interesting, I have had
22 analysis done on more fecal samples from a site
23 just north of Red Rock Canyon. And I got the
24 preliminary results back, and again, sure enough,
25 in the spring they're eating mostly foliage of

1 (indiscernible) shrub, spiny hop-sage. And as you
2 go into April they're eating mostly native
3 wildflowers.

4 So that's a site, you know, another
5 site. And so, I'm sorry to spring that, but I
6 just got the results.

7 MS. GULESSERIAN: Do you agree that
8 certain plant species do not show up in fecal
9 matter from the Mojave ground squirrel, based on
10 published literature?

11 DR. LEITNER: As your witness has
12 stated, there are difficulties with the fecal
13 analysis in that there are some food items that
14 are readily digestible and may not be able to pick
15 up under the microscope any fragments.

16 However, considering that we can't take
17 stomach samples from this listed animal, the fecal
18 analysis is probably the best we can do.

19 And I can give an example, although we
20 observed --

21 HEARING OFFICER CELLI: I actually
22 believe --

23 MS. GULESSERIAN: That's okay, thank
24 you.

25 HEARING OFFICER CELLI: -- that the

1 question was answered.

2 MS. GULESSERIAN: Yes, thank you.

3 DR. LEITNER: Oh, I -- sorry.

4 HEARING OFFICER CELLI: I appreciate
5 your insight. Is there any further cross from
6 CURE?

7 MS. GULESSERIAN: There is not, thank
8 you very much.

9 HEARING OFFICER CELLI: Any cross by the
10 staff?

11 MR. BABULA: Just a quick question.

12 CROSS-EXAMINATION

13 BY MR. BABULA:

14 Q I think I need a clarification. My
15 understanding was that you're mitigating for
16 ground squirrel on the project site and on the
17 transmission. So you are presuming presence in
18 both places. I mean isn't that -- you may not
19 think there are any there, but you're mitigating
20 or you're acquiring habitat.

21 So in the end there is mitigation
22 regardless of if there's two or zero or there's no
23 habitat. Is that the case?

24 DR. LEITNER: Well, that is true. I
25 think that the mitigation for loss of habitat on

1 the transmission area, that's loss of habitat.
2 Whereas, we're looking at compensation for some
3 minimal take on the plant site.

4 MR. BABULA: Right.

5 DR. LEITNER: Okay. But there is
6 substantial mitigation in my opinion.

7 MS. VANCE: Just to clarify, Fish and
8 Game was not willing to concede that the species
9 was not absent with no trapping surveys. And so
10 there was a series of meetings and discussions
11 where the applicant conceded and gave us some
12 reasonably supported information, based on
13 biological considerations, that there could be
14 animals present in low densities, at least during
15 part of their lifecycle.

16 And we concurred with that determination
17 but we did not concur that it's not habitat or
18 that they're not there. And I just want to be
19 clear on that. And the FSA reflects that
20 agreement.

21 HEARING OFFICER CELLI: That's fabulous.
22 And there's no question pending.

23 MR. BABULA: Was that your
24 understanding?

25 HEARING OFFICER CELLI: And so I'm just

1 going to ask the witnesses. I know everybody is
2 so enthusiastic to testify.

3 (Laughter.)

4 HEARING OFFICER CELLI: But I'm going to
5 request you wait for a question from your attorney
6 first and answer that question.

7 (Laughter.)

8 HEARING OFFICER CELLI: Not what you
9 want to speak to specifically. So where we're at
10 now is with staff, right.

11 MR. BABULA: Okay. So given that, so
12 that's your understanding, is there is some sort
13 of mitigation because there was a feeling that
14 there may be some transients or there's some
15 ground squirrels on the project site that could be
16 impacted.

17 So the mitigation that's being proposed
18 is to address loss of those two individuals?

19 DR. LEITNER: That's my understanding.

20 MR. BABULA: Okay. No further
21 questions.

22 HEARING OFFICER CELLI: Thank you. Any
23 redirect?

24 MS. LUCKHARDT: No.

25 (Laughter.)

1 HEARING OFFICER CELLI: Your next
2 witness.

3 MS. LUCKHARDT: Okay, my next witness is
4 Dr. Karl. And this will be shorter.

5 HEARING OFFICER CELLI: Thank you.

6 DIRECT EXAMINATION

7 BY MS. LUCKHARDT:

8 Q One question, or actually I have two
9 questions. How many -- or maybe three --
10 (Laughter.)

11 MS. LUCKHARDT: I need to lay some kind
12 of foundation. So your role on this project has
13 been to analyze impacts to the desert tortoise, is
14 that correct?

15 DR. KARL: That's correct.

16 MS. LUCKHARDT: And how many years have
17 you been studying the desert tortoise?

18 DR. KARL: Thirty-two.

19 MS. LUCKHARDT: And can you give us --

20 HEARING OFFICER CELLI: So we will
21 determine that she's an expert in the desert
22 tortoise; for 32 years she's done that.

23 MS. LUCKHARDT: That's right.

24 Can you provide your overall thoughts on
25 the development of the Beacon site for solar

1 generation and its impact on the desert tortoise?

2 DR. KARL: Yes, thank you. From the
3 perspective of desert biology and impacts to
4 native wildlife species it would be really hard to
5 find a site that's more suitable for development
6 of a solar project in the desert than the Beacon
7 site.

8 And this is because this site is highly
9 degraded. It has no natural communities on it.
10 Second, it's been highly degraded for decades. It
11 has been out of use or of little to no use by
12 terrestrial vertebrates because of farming and
13 because it was abandoned.

14 It is near or adjacent to other
15 anthropogenic development, including a highway
16 that goes north/south from southern California to
17 the Owens Valley.

18 And fourth, the project will not result
19 in any further impacts to terrestrial wildlife
20 species.

21 Those are the overarching considerations
22 that make this a truly excellent site for solar
23 development in the Mojave Desert.

24 For desert tortoises in particular,
25 there were comprehensive U.S. Fish and Wildlife

1 Service protocol level surveys conducted on the
2 project in 2007 and 2008. The surveys were
3 approved by the Service at Fish and Game. No
4 tortoises were found to occupy the site.

5 During those same surveys tortoises were
6 found to occupy the immediately adjacent area.
7 I'm talking about the plant site. They were found
8 to occupy the immediately adjacent area even up
9 to the border of the plant site. They stop short
10 of using the plant site. Why? Because there is
11 no tortoise habitat on the plant site.

12 Despite the fact that there is no
13 tortoise habitat on the plant site, Beacon LLC has
14 agreed to purchase 100 acres of usable desert
15 tortoise habitat that will be protected and
16 managed in perpetuity in an area that's targeted
17 for desert tortoise conservation and recovery.
18 And this area will either expand or consolidate
19 these conservation areas.

20 And this will assist in desert tortoise
21 persistence and recovery during the same time --
22 at the same time the Beacon project will not
23 diminish desert tortoise persistence or recovery.

24 So there is a net benefit to desert
25 tortoises from the Beacon project. And that just

1 about does it. That's about as good as it gets
2 for a solar site in the Mojave Desert.

3 MS. LUCKHARDT: And just to clarify one
4 point, were protocol desert tortoise surveys
5 conducted along the gas pipeline route when the
6 gas pipeline was proposed for the project?

7 DR. KARL: It's my understanding they
8 were, in 2008.

9 MS. LUCKHARDT: Thank you. Dr. Karl is
10 available for cross if you want to do desert
11 tortoise at this point.

12 HEARING OFFICER CELLI: Ms. Gulesserian,
13 do you have a very focused cross?

14 CROSS-EXAMINATION

15 BY MS. GULESSERIAN:

16 Q Did you survey around the perimeter of
17 the project site?

18 DR. KARL: I did not survey the project
19 site at all, other than doing a habitat
20 evaluation. The surveys were conducted by --

21 MS. LUCKHARDT: What we may need to do
22 at this point in time is take Ms. Guigliano's
23 testimony, as well, so that the questions, if they
24 go to the surveys, can be taken by her at the same
25 time, so we can do the --

1 HEARING OFFICER CELLI: Well, if we're
2 going to do that then rather than go into cross,
3 let's just take her direct right now, if it's a
4 quick one.

5 MS. LUCKHARDT: Yeah.

6 HEARING OFFICER CELLI: And then, Ms.
7 Gulesserian, we'll let you cross both witnesses.
8 So go ahead -- is it Guigliano or Guigliano?

9 MS. GUIGLIANO: Guigliano.

10 HEARING OFFICER CELLI: Okay, you spell
11 it G-i-u?

12 MS. GUIGLIANO: G-u-i.

13 (Laughter.)

14 DIRECT EXAMINATION

15 BY MS. LUCKHARDT:

16 Q And, Ms. Guigliano, I understand that
17 you have one correction to your testimony. Could
18 you point that out and refer to the exhibit
19 number.

20 MS. GUIGLIANO: Yes. Yeah, it's exhibit
21 325. In exhibit 325, on page 9, paragraph number
22 4 should actually say one western burrowing owl
23 was observed outside of the project, as opposed to
24 no western burrowing owls were observed. So this
25 was during the groundwater pump testing.

1 MS. LUCKHARDT: Did everyone get that?

2 HEARING OFFICER CELLI: Yes.

3 MS. LUCKHARDT: Okay, thank you. And
4 then could you please, in a short summary, provide
5 your response to the concerns expressed by Mr.
6 Cashen in his testimony regarding impacts to the
7 western burrowing owl?

8 MS. GUIGLIANO: Sure. Mr. Cashen claims
9 or stated that appropriate western burrowing owl
10 surveys, protocol surveys guidelines were not
11 conducted for the project.

12 And, in fact, there are four phases to
13 western burrowing owl surveys. I don't think I
14 need to get into the details of the four phases
15 but all four phases were conducted for all areas
16 of the project site.

17 They were conducted in 2007 for the
18 plant site, and a transmission area. They were
19 conducted in 2008 for what we call the
20 supplemental survey area, and included an 80-acre
21 parcel in the north, a 14-acre parcel north of the
22 access road, and the transmission corridor space
23 on the centerline that was more accurately mapped.
24 And, in addition, protocol surveys were conducted
25 along the natural gas pipeline.

1 In 2009 surveys were conducted for the
2 emergency access road which was added from the
3 northeast corner of the project site to the road.
4 And in 2009 no western burrowing owls were found.
5 And so that's the only survey that required winter
6 surveys, which were conducted in January of 2010.

7 All the results from all of the surveys
8 for western burrowing owls were provided in survey
9 reports in accordance with phase four of the
10 guidelines.

11 In 2007 there were only two western
12 burrowing owls detected within the plant site. In
13 2008 there was one burrowing owl detected in the
14 buffer of the plant site, two detected in the
15 buffer to the gasline. And in 2009 and 2010 for
16 the access road no western burrowing owls were
17 detected.

18 Mitigation was proposed in accordance
19 with CBOC and CDFG guidelines for two individuals,
20 because in any year no more than two individuals
21 were ever found within the project site limits.

22 You cannot assume that the individuals
23 that were detected in different years during
24 different survey protocols were independent
25 sightings and individual owls.

1 MS. LUCKHARDT: And then I believe
2 you've covered this a little bit, but do you agree
3 with Dr. Bias' testimony that proper surveys were
4 not conducted of the natural gas pipeline route?

5 MS. GUIGLIANO: No, that's not correct.
6 He didn't reference the 2008 spring report. And
7 in 2008 a full survey, protocol surveys were
8 conducted for rare plant, burrowing owl, desert
9 tortoise within the natural gas pipeline when that
10 pipeline was added. It was added after the spring
11 surveys for '07, so they were conducted
12 independently and reported in the 2008 spring
13 survey report.

14 MS. LUCKHARDT: And why does that
15 pipeline corridor matter for the way the project
16 is currently configured?

17 MS. GUIGLIANO: The natural gas pipeline
18 was originally surveyed for the purpose of
19 installation of natural gas pipeline, but the same
20 pipeline route is being used for the water
21 pipeline. So basically it's a utility pipeline
22 corridor now, and the survey still applies to the
23 same area.

24 From the point where the surveys were
25 stopped for the natural gas pipeline, the pipeline

1 to California City proceeds in California City
2 Boulevard. So no additional surveys were
3 conducted.

4 MS. LUCKHARDT: And that would be the
5 section of the waterline from the plant site to?

6 MS. GUIGLIANO: To California City.

7 MS. LUCKHARDT: Thank you. Both
8 witnesses are available for cross.

9 HEARING OFFICER CELLI: Thank you. Now,
10 if you're going to cross a witness or the other,
11 please call them by name so we know who needs to
12 answer the question. CURE.

13 CROSS-EXAMINATION

14 BY MS. GULESSERIAN:

15 Q I was asking about the desert tortoise
16 earlier, so I was asking Ms. Karl if you surveyed
17 the perimeter of the project site. Is that
18 question to Ms. -- sorry?

19 MS. GUIGLIANO: Guigliano.

20 MS. GULESSERIAN: -- Guigliano.

21 MS. GUIGLIANO: Full protocol surveys
22 were conducted in the plant site and transmission
23 lines and in the associated buffers which would
24 include adjacent areas, as required by the
25 agencies in the protocol survey guideline.

1 MS. GULESSERIAN: Okay. Did you find an
2 intact -- so this is back to Ms. Karl. Did you
3 find an intact juvenile carcass on the project
4 site?

5 DR. KARL: Actually that would be Dr.
6 Karl.

7 MS. GULESSERIAN: Excuse me, thank you.

8 DR. KARL: And (inaudible) did find two
9 juvenile carcasses onsite, both of which had raven
10 -- very likely, based on the type of hole, a raven
11 hole from the beak in the carapace. So these
12 juveniles were depredated by ravens.

13 MS. GULESSERIAN: Did you find a
14 deteriorated adult burrow on the project site?

15 DR. KARL: There was a deteriorated
16 adult burrow on the project site.

17 MS. GULESSERIAN: Did you find two sets
18 of bone and carapace fragments on the project
19 site?

20 DR. KARL: Along the southern border
21 just inside the plant site there were two groups
22 of immature tortoise bone fragments which were
23 greater than four years old, and very likely based
24 on their proximity, may have been the same.

25 MS. GULESSERIAN: When you say they're

1 greater than four years old, did you do testing to
2 determine that they were greater than four years
3 old?

4 DR. KARL: No. But there is a standard
5 that is used by desert tortoise biologists. And
6 it's fairly easy to tell qualitatively from a
7 number of factors if a tortoise has died within
8 the last year, or if it has died more than four
9 years previously.

10 MS. GULESSERIAN: What are those
11 qualitative factors? Are they described anywhere?

12 DR. KARL: Under a year or over four
13 years?

14 MS. GULESSERIAN: Well, you say that
15 they are greater than four years old, so --

16 DR. KARL: Um-hum.

17 MS. GULESSERIAN: -- what did you find
18 that made them greater than four years old?

19 DR. KARL: Tortoise bones that are
20 greater than four years old tend to be, they
21 disarticulate very easily. The edges tend to be
22 crumbly, even to the point of being powdery.

23 The bone has a scaly appearance to it
24 and it's flaky. And scoots, if they're present at
25 all, on an older carcass like this, would be, in

1 most cases, -- it really depends on where the
2 carcass might be, but this one was groups of
3 fragments. So in most cases the scoot would not
4 be adhered to the bone any longer, and there would
5 be the annuali on the scoot would be peeling to a
6 great extent.

7 MS. GULESSERIAN: Are you aware of the
8 FSA's conclusion that desert tortoise might occur
9 within 429.5 acres of the project site that
10 supports disturbed saltbush scrub and desert wash
11 scrub?

12 DR. KARL: Yes.

13 MS. GULESSERIAN: Is this potential
14 habitat for this species?

15 DR. KARL: No.

16 MS. GULESSERIAN: What is the basis for
17 your conclusion that the plant site does not
18 provide habitat for desert tortoise?

19 DR. KARL: Most of the plant site is
20 barren. The only place where there are shrubs is
21 in the wash, which is highly degraded. There's a
22 little bit of lepidospartum. The patches of
23 shrubs in the wash are separated by distances of
24 1875 feet, 760 feet, and it goes down. But there
25 are broad stretches where there is no vegetation

1 in this wash.

2 The lepidospartum is pretty much the
3 only species there. And so it provides some
4 cover, but very very patchy.

5 At the north end of this wash it's a
6 soil, and it's completely inundated by Russian
7 thistle, which is a noxious exotic species.

8 On the 369 acres of saltbush scrub in
9 the northwest site, as Dr. Leitner so eloquently
10 stated, it is a monotypic stand of saltbush. Now
11 that is not a natural habitat. A natural all-
12 scale scrub habitat would include a number of
13 other species.

14 The other thing that's very important
15 and it seems to be overlooked a great deal is that
16 habitat is not simply the vegetation. It's not
17 simply the shrub species that are present.

18 Shrub species composition is merely one
19 aspect of habitat. Species evenness, species
20 richness, the height of the shrubs, the
21 topography, the microtopography, the hydrology,
22 the soils, the substrate, those are all very very
23 important features.

24 And in that area, in the northwest,
25 where there's regrowth of saltbush scrub, the

1 soils, in fact, are very fine, they're very
2 compacted. They show a lot of evidence of
3 standing water, which isn't really a great thing
4 for a burrowing animal.

5 And, in fact, if you look at the soils
6 analysis for the AFC, it identifies this as
7 Rosamond clay loam, saline, alkaline. That is not
8 supportive of desert tortoises.

9 MS. GULESSERIAN: Did you just say that
10 there's standing water on the project site?

11 DR. KARL: I said that it's cracked, so
12 it was indicative of standing water. It's very
13 silty soil which holds water.

14 MS. GULESSERIAN: In your rebuttal
15 testimony you state that there's little scientific
16 information statistically correlating habitat
17 qualities to desert tortoise population densities
18 and recovery potential.

19 DR. KARL: That's true.

20 MS. GULESSERIAN: This is exhibit 326.
21 And you also stated that published papers are
22 almost nonexistent and the handful of unpublished
23 papers either provide detailed analysis
24 correlating habitat variables in localized area,
25 or failed to conduct an in-depth analysis.

1 So, if there's little scientific
2 information and published papers are almost
3 nonexistent, how can you now say that the habitat
4 variables on the site mean that desert tortoise
5 are not there?

6 DR. KARL: That's a very good question.

7 I did my masters thesis on the habitat
8 associations of the desert tortoise in Nevada.
9 After that I spent the next 30 years assessing
10 habitat and tortoise densities in California,
11 Nevada and Utah.

12 So, --

13 MS. GULESSERIAN: So did you --

14 DR. KARL: -- I have quite a good idea
15 about where tortoises reside and where they don't.

16 And I had the opportunity, and Judy
17 would know this, too, we had the opportunity to
18 look at tortoise populations when tortoise
19 populations were high.

20 The current -- any current analyses of
21 habitat are based on the current tortoise
22 densities, which are very very low. Tortoise
23 densities have declined dramatically in the last
24 20 years. And in many places where there is still
25 excellent habitat there are very few tortoises.

1 So it's -- the newer studies would
2 probably fail because of a very fine-grained
3 approach based on current tortoise densities.

4 MS. GULESSERIAN: So in these years of
5 research on desert tortoise population you're
6 still saying there's little scientific information
7 and barely any published papers correlating
8 habitat qualities to desert populations.

9 Did you publish anything that would help
10 us with the little scientific information that is
11 out there?

12 DR. KARL: No.

13 MS. GULESSERIAN: Okay. Is it correct
14 that published papers are generally subject to the
15 rigorous scrutiny of peers in the scientific
16 community?

17 DR. KARL: Published papers generally
18 are.

19 MS. GULESSERIAN: Okay. Is it possible
20 for desert tortoise to occur on barren areas
21 located in between habitat areas?

22 DR. KARL: It's possible for a tortoise
23 to walk across anything.

24 MS. GULESSERIAN: Okay.

25 DR. KARL: Including a road, including

1 asphalt. I've seen them on highways quite a
2 number of times.

3 MS. GULESSERIAN: So it's possible that
4 they would occur between different shrub
5 vegetations?

6 DR. KARL: Between -- you mean different
7 shrubs?

8 MS. GULESSERIAN: On barren lands
9 between different shrubs or shrub communities.

10 DR. KARL: There probably wouldn't be
11 different shrub communities in the same area, but
12 it wouldn't matter. Your question is would they
13 walk on barren land. Yes, they would.

14 MS. GULESSERIAN: Okay. Is it true that
15 desert tortoise sign, burrows, scats, carcasses
16 indicates presence and requires formal
17 consultation with Fish and Wildlife Service?

18 DR. KARL: Burrows, scat and -- there
19 were no scat --

20 MS. GULESSERIAN: Desert tortoise sign.
21 Does desert tortoise sign indicate presence and
22 require formal consultation with Fish and Wildlife
23 Service?

24 (Parties speaking simultaneously.)

25 DR. KARL: Desert tortoise sign does not

1 necessarily indicate present on the site. And you
2 have to qualify the kind of sign. The kinds of
3 sign that were found on the Beacon site were two
4 juveniles, which were clearly depredated by
5 ravens. They could easily have been dropped
6 there.

7 And the bone fragments on the southern
8 edge were on the southern edge. But again, any
9 carcass, even an entire intact carcass could be
10 transported to the site. So just because you see
11 a carcass doesn't mean the animal died there.

12 So the burrow -- now the burrow is
13 actually an excellent indicator that there
14 probably are no tortoises on the site, because it
15 was a deteriorated burrow. And tortoises have a
16 tendency to use anywhere from, oh, two to 20
17 burrows every year.

18 And so if a tortoise were actually
19 living there, using that site on a regular basis,
20 it was part of its core use area, or even part of
21 its home range, you would expect to see more
22 burrows, scat and potentially even the tortoise.

23 So, there was only one deteriorated
24 burrow and no scat, no other burrows. Scat and
25 burrows, especially current burrows, are

1 suggestive that tortoises could be on a site.

2 MS. GULESSERIAN: So are you saying that
3 there's no desert tortoise sign on the project
4 site?

5 DR. KARL: On the plant site. I did not
6 say there's no sign. I'm saying that there are no
7 tortoises on the plant site.

8 MS. GULESSERIAN: Is there desert
9 tortoise sign on the project site?

10 DR. KARL: Yes, on the project site.

11 MS. GULESSERIAN: Okay. Is it true the
12 project area on the west side of state route 14 is
13 habitat, is occupied by desert tortoise, and
14 therefore consultation with Fish and Wildlife
15 Service is required?

16 MS. LUCKHARDT: I object. That calls
17 for a legal conclusion, asking whether
18 consultation with Fish and Wildlife Service is
19 required.

20 MS. GULESSERIAN: Are you consulting
21 with Fish and Wildlife Service regarding the
22 habitat, desert tortoise habitat, and desert
23 tortoises?

24 MR. BABULA: I would object that
25 anything with the Fish and Wildlife Service is a

1 separate permit. We have no in-lieu authority to
2 do permits, to cover permits from the Service. So
3 it's irrelevant to this proceeding.

4 HEARING OFFICER CELLI: What's the
5 relevance? Offer of proof.

6 MS. GULESSERIAN: I'd like to know
7 whether the Fish and Wildlife Service is
8 evaluating the applicant's biological resource
9 data on desert tortoise.

10 MS. LUCKHARDT: I just want to point out
11 the obvious, that the Fish and Wildlife Service is
12 here and so --

13 HEARING OFFICER CELLI: That's right.

14 MS. LUCKHARDT: -- why are you asking
15 our witness about --

16 (Parties speaking simultaneously.)

17 MS. GULESSERIAN: So it should be easy
18 to answer whether the applicant is consulting --

19 HEARING OFFICER CELLI: Objection
20 sustained.

21 MS. GULESSERIAN: -- with the Fish and
22 Wildlife Service.

23 HEARING OFFICER CELLI: Let's move to
24 the next. It's now 5:30, by the way. If you're
25 finished with your cross, we're going to take a

1 break.

2 MS. GULESSERIAN: I am with Ms. Karl.

3 HEARING OFFICER CELLI: Okay.

4 MS. GULESSERIAN: Dr. Karl, excuse me.

5 HEARING OFFICER CELLI: And so, well,
6 you say that. Did you have further questions for
7 Ms. Guigliano?

8 MS. GULESSERIAN: I do.

9 HEARING OFFICER CELLI: All right.
10 We're going to take a five-minute break. Everyone
11 needs to be back in their seats at 20 to 6:00.

12 I just want to make mention of the fact
13 that this is biology. We haven't even heard from
14 staff yet.

15 MR. BABULA: We'll be short.

16 (Laughter.)

17 HEARING OFFICER CELLI: But you have
18 three witnesses and it always takes a little
19 longer than we think.

20 But I need to, in this five minutes, if
21 you wouldn't mind, Ms. Gulesserian, really try to
22 have everything crisply ready to go for your
23 remaining five minutes or less of cross-
24 examination of Ms. Gulesserian.

25 MS. GULESSERIAN: Yes.

1 HEARING OFFICER CELLI: Please. Thank
2 you. Let's take our break now; take five minutes
3 and come on back.

4 (Brief recess.)

5 HEARING OFFICER CELLI: So are we back
6 on the record, is everybody here that needs to be
7 here? It looks like everyone is here so now with
8 that, CURE you are crossing Ms. Guigliano.

9 MS. GULESSERIAN: Thank you. Ms.
10 Guigliano, is it correct that mitigation for
11 impacts to burrowing owl is based on loss of owls?

12 MS. GUIGLIANO: Yes.

13 MS. GULESSERIAN: And does this require
14 surveys as described in your rebuttal testimony,
15 which is exhibit 325, pages 8 through 10?

16 MS. GUIGLIANO: Yes.

17 MS. GULESSERIAN: Did you survey the 23
18 miles southern segment of the Rosamond Community
19 Services recycled water pipeline route?

20 MS. GUIGLIANO: All surveys, biological
21 surveys for the Rosamond pipeline were done by the
22 Energy Commission, not by us.

23 MS. GULESSERIAN: Did you survey the
24 alternative southern pipeline route for the
25 Rosamond Community Services recycled water

1 pipeline through the Air Force Base?

2 MS. LUCKHARDT: I think that's been
3 asked and answered.

4 MS. GULESSERIAN: I asked before about
5 the 23-mile southern segment, for clarification --

6 HEARING OFFICER CELLI: You may answer
7 the question if you know the answer.

8 MS. GUIGLIANO: We did not do any survey
9 associated with the Rosamond pipeline.

10 HEARING OFFICER CELLI: Thank you.

11 MS. GULESSERIAN: For the project site,
12 is it accurate that in 2007 two western burrowing
13 owls were observed?

14 MS. GUIGLIANO: Yes.

15 MS. GULESSERIAN: Is it also accurate
16 that in 2008 you surveyed other project areas and
17 found three individual owls?

18 MS. GUIGLIANO: In 2008 we surveyed
19 additional supplemental survey areas and found
20 three owls in the buffer area.

21 MS. GULESSERIAN: In your rebuttal
22 testimony to Mr. Cashen, he had testified that you
23 failed to account for an additional owl identified
24 at the site, and that mitigation should be for at
25 least three pairs. You are familiar -- your

1 response, that it's not appropriate to assume
2 there's different birds, correct?

3 MS. GUIGLIANO: You asked two different
4 things. Something about a third owl in 2008?

5 MS. GULESSERIAN: Okay, I can go back.
6 Are you familiar with Scott Cashen's testimony
7 that required mitigation for two owl pairs fails
8 to account for the fifth owl identified at the
9 site?

10 MS. GUIGLIANO: The third owl at the
11 site. Yes, I'm familiar with Mr. Cashen's
12 testimony. But I don't agree that there's three
13 independent sightings of owls.

14 MS. GULESSERIAN: Okay, what's your
15 basis for not agreeing?

16 MS. GUIGLIANO: Each year during the
17 protocol surveys we saw no more than two owls
18 within the project area. And so in '07 there were
19 two owls identified within the plant site. A
20 third owl that was referred to was identified
21 outside of the protocol survey in similar areas
22 during pump testing.

23 In 2008 three owls were observed. Only
24 one was in the plant site and one was in the
25 buffer area, not in the plant site.

1 So, in no single year were there ever
2 more than two independent sightings of owls during
3 a protocol survey session.

4 MS. GULESSERIAN: Okay, can you clarify
5 then for the record whether you went to the same
6 area of the plant site in each year?

7 MS. GUIGLIANO: In 2007 the bulk of the
8 plant site was surveyed, as were the transmission
9 lines. In 2008 there was an 80-acre parcel that
10 was within the original plant site area that was
11 surveyed, so it's a section of the northern
12 portion that's adjacent to the rest of the parcel.

13 In addition to the 14-acre, which is adjacent to
14 the site above the northern -- or above the access
15 road from the west.

16 MS. GULESSERIAN: And so were the birds
17 located in the same location each year?

18 MS. GUIGLIANO: Were the owls located in
19 the same locations? In 2008 -- in 2007 it was in
20 the northwest corner; in 2008 I believe it was
21 also a sighting in the buffer on the north side.
22 So it's likely that it could have been the same
23 owl.

24 The other sightings in '08 were along
25 the pipeline, not associated with the plant site,

1 and in the buffer.

2 MS. GULESSERIAN: Okay. I have no
3 further questions.

4 HEARING OFFICER CELLI: Thank you.
5 Cross, staff?

6 MR. BABULA: Quick question.

7 HEARING OFFICER CELLI: Please make sure
8 you identify who you're asking the question.

9 MR. BABULA: Okay.

10 CROSS-EXAMINATION

11 BY MR. BABULA:

12 Q Dr. Karl, is there -- you testified on
13 the plant site there are only juvenile carcass and
14 bone fragment. Is the applicant providing some
15 sort of mitigation for tortoises that might
16 transiently be on the site?

17 DR. KARL: Yes, they are. Because there
18 is the possibility that, because there are
19 tortoises in adjacent habitat, there is the
20 possibility that a tortoise could occur onsite.
21 So the project is providing 20 acres of
22 compensation for -- well, it's 100 acres, because
23 of the Mojave ground squirrel, it's 100 acres of
24 compensation.

25 MR. BABULA: Okay, thank you. And then

1 for Ms. Guigliano, same question regarding
2 burrowing owls. Is there mitigation for burrowing
3 owls proposed?

4 MS. GUIGLIANO: Yes. Mitigation for
5 burrowing owls is proposed assuming two pairs.
6 And again that has to be clarified during the
7 preconstruction survey, but they'd be relocated,
8 includes 20 acres of offsite compensatory
9 mitigation.

10 MR. BABULA: Okay. And is there also a
11 requirement that before Beacon starts construction
12 of any of these pipelines, whether it be -- well,
13 especially the Rosamond pipeline, that there be
14 surveys done?

15 MS. GUIGLIANO: That's our
16 understanding, yes.

17 MR. BABULA: Okay. No further
18 questions.

19 HEARING OFFICER CELLI: Redirect?

20 MS. LUCKHARDT: None.

21 HEARING OFFICER CELLI: Thank you. That
22 closes biology then. No? I've got someone --

23 MS. LUCKHARDT: No.

24 HEARING OFFICER CELLI: -- pointing to
25 me shaking their head no. Pointing to staff.

1 (Parties speaking simultaneously.)

2 HEARING OFFICER CELLI: They're sitting
3 here with three witnesses that we haven't heard
4 from.

5 MR. BABULA: They just wanted to see
6 what this is like.

7 HEARING OFFICER CELLI: I'm sorry.

8 MR. BABULA: Okay.

9 HEARING OFFICER CELLI: So with that,
10 staff's correct.

11 MR. BABULA: Okay. Quick procedural
12 question. I have emailed you regarding the
13 backgrounds of Julie and Judy, because they
14 weren't available I couldn't get you anything. In
15 your order you wanted it before so I could give,
16 have them just give a quick spiel on their
17 backgrounds to establish. Or if everybody will
18 stipulate since they are employed with the Service
19 and Fish and Game?

20 HEARING OFFICER CELLI: So, are their
21 résumés in the record yet?

22 MR. BABULA: No.

23 HEARING OFFICER CELLI: They're not,
24 okay.

25 MR. BABULA: Because I had said I would,

1 because Judy was in Florida and not available and
2 I couldn't get anything from her. And Julie's
3 came in too late for me to --

4 HEARING OFFICER CELLI: The question is,
5 applicant and CURE, whether you'd be willing to
6 stipulate to the expertise of these two witnesses,
7 or do you want to hear a long, drawn out
8 recitation of all of the things that make them
9 expert in their fields.

10 Applicant, I'll let you go first.

11 MS. LUCKHARDT: We are happy to
12 stipulate.

13 HEARING OFFICER CELLI: Okay. CURE?

14 MS. GULESSERIAN: CURE will stipulate.

15 HEARING OFFICER CELLI: Thank you. So,
16 we will deem as stipulated that these experts are
17 experts in their field. And then you might want
18 to give a little quick one sentence on what
19 they're field is so that we know what we're
20 listening for.

21 MR. BABULA: Okay.

22 DIRECT EXAMINATION

23 BY MR. BABULA:

24 Q Why don't we start off with that.

25 MS. VANCE: I have a bachelors and

1 masters degree in biology with an ecology emphasis
2 from CSU Fresno. And I worked for the Department
3 of Water Resources for six years and then for the
4 past five and a half I've been with the Department
5 of Fish and Game supervising the Endangered
6 Species and CEQA and Timber Unit. And now Program
7 Manager over all of our regulatory programs for
8 our 12-county region, which includes streambed
9 alteration, FERC, water rights, and our special
10 renewable energy unit.

11 HEARING OFFICER CELLI: And you're Julie
12 Vance, right?

13 MS. VANCE: Correct. Sorry.

14 HEARING OFFICER CELLI: You're with
15 CDFG?

16 MS. VANCE: Correct.

17 HEARING OFFICER CELLI: Which is
18 certainly, that was way more information than we
19 needed, because we've already deemed that you're
20 an expert.

21 MS. VANCE: Okay.

22 HEARING OFFICER CELLI: So, Judy, we
23 won't need your expertise, per se, either. We
24 just need to know what your title is. That will
25 help.

1 MS. HOHMAN: I'm a Fish and Wildlife
2 biologist for the U.S. Fish and Wildlife Service.
3 I've been working on desert issues in the Ventura
4 Office since 1990, specifically desert tortoise.
5 And I was one of the co-authors of the rule to
6 list the Desert Tortoise as a Threatened Species
7 under the federal Endangered Species Act.

8 HEARING OFFICER CELLI: Thank you.

9 MS. SPEAKER: You're clicking.

10 HEARING OFFICER CELLI: The record
11 should reflect that the court reporter's tape
12 recorder was clicking. I was not clicking.

13 (Laughter.)

14 HEARING OFFICER CELLI: With that,
15 staff, please.

16 MR. BABULA: Okay. This is for
17 Dr. Sanders. Please describe your overall
18 conclusions regarding the Beacon project's impact
19 to biological resources.

20 DR. SANDERS: Well, as you've already
21 heard, most of the Beacon site is disturbed and
22 supports little habitat for Mojave ground squirrel
23 or desert tortoise. But we could not rule out the
24 possibility of there being desert tortoise or
25 Mojave ground squirrel occurring there.

1 So we consulted with Fish and Game and
2 Fish and Wildlife Service; developed conditions of
3 certification that would avoid or minimize any
4 impacts to desert tortoise and Mojave ground
5 squirrel, and also provided compensation.

6 And with all those conditions of
7 certification in the final staff assessment, staff
8 concluded that any impacts to biological
9 resources, including listed species, would be
10 mitigated to less than significant levels.

11 MR. BABULA: In developing these
12 conditions did you collaborate with Fish and Game
13 and Fish and Wildlife?

14 DR. SANDERS: We did.

15 MR. BABULA: And then regarding the
16 Mojave ground squirrel and the state-listed
17 species, did you find that the mitigation was
18 fully mitigating any impact?

19 DR. SANDERS: We did.

20 MR. BABULA: Okay. So I know you've
21 read all the testimony and you've had your
22 supplemental testimony; we've heard the testimony
23 of Dr. Bias; we've heard all the testimony from
24 the applicant.

25 So at this point is there anything else

1 you'd like to add to the record regarding
2 biological resources?

3 DR. SANDERS: Regarding also the
4 testimony we've heard?

5 MR. BABULA: Right.

6 DR. SANDERS: Yeah. I just want to
7 clarify one thing that Dr. Bias said, because I
8 had the impression, and perhaps others did also,
9 that there'd be 4000 acres of impacts associated
10 with the Rosamond pipeline.

11 And I just want to clarify, and I think
12 you're talking about indirect impacts for the most
13 part, but I want to clarify that we studied an
14 area that was 22 miles long, the point from the
15 Rosamond water treatment plant to the point of
16 delivery, 2000 feet wide. And we mapped
17 vegetation in that area.

18 But actual impacts of the pipeline are
19 going to be about 11 acres to the native plant
20 communities, to creosote bush scrub and atroplex
21 scrub. Only about two acres of that will be
22 permanent, because it's a buried pipeline.

23 There's a 25-foot construction corridor
24 that we used for the basis for that impact
25 analysis. And that is being -- and we're assuming

1 that Mojave ground squirrel and desert tortoise
2 could occur along the pipeline, because there's
3 good habitat, especially in the northern portions
4 of that pipeline.

5 So the same things that are in place for
6 the same avoidance, minimization measures that are
7 in place for the transmission line, where there is
8 good habitat west of 14, are also in place for the
9 Rosamond pipeline.

10 So all the same avoidance, minimization
11 measures, having a designated biologist present
12 when there's any construction, that's happening.
13 We're also mitigating at a three-to-one ratio as
14 for the habitat west of state route 14. And
15 that's contained in bio-21, the Rosamond pipeline
16 mitigation.

17 Also there are indirect impacts which we
18 addressed in appendix A. All this is contained in
19 appendix A of the FSA, all the things that I'm
20 telling you about.

21 Staff did a reconnaissance survey,
22 vegetation, mapping, assessment of impacts, and
23 we've got measures in there, the same measures
24 that apply to minimizing indirect impacts for the
25 plant site are also in place. Weed control, dust

1 suppression, all the things that you would have to
2 do to protect biological resources, those also are
3 in place for the Rosamond pipeline.

4 So, staff has concluded that impacts to
5 biological resources associated with the
6 construction of that pipeline have been mitigated
7 to less than significant levels. Fully mitigated
8 to the listed species.

9 I have one more thing to add, and that
10 was I'm very sorry to all of you for my
11 inconvenient absence this morning. I know it
12 pushed us all back four hours in the queue.
13 Especially to my fellow biologists who thought
14 they'd be home by now. So, I'm sorry.

15 MR. BABULA: Julie Vance, would you like
16 to add any information and clarify some testimony
17 that occurred earlier?

18 HEARING OFFICER CELLI: That isn't
19 cumulative, of course. So basically anything new
20 that we haven't heard yet.

21 (Laughter.)

22 MS. VANCE: I just wanted to clarify
23 regarding the requirements of the California
24 Endangered Species Act, and what full mitigation
25 means.

1 CESA requires that the impacts of the
2 taking be fully mitigated. It does not specify
3 regarding the habitat. And the state definition
4 of take is less broad than that in the federal
5 Endangered Species Act. It's defined in section
6 86 of the Fish and Game Code, which is -- take is
7 hunt, pursue, catch, capture or kill or any
8 attempt to do so. So it's very much regarding the
9 direct impacts to the animal, as opposed to
10 habitat.

11 Now, for a fossorial animal like
12 tortoise and squirrel, we do usually use habitat
13 kind of as a proxy because you have to assume when
14 you can't find all the animals when they're
15 cryptic that you have to make some assumptions
16 about where they are and how many.

17 However, we do evaluate them on a case-
18 by-case basis. And in the circumstance where the
19 habitat is quite degraded, we didn't, you know,
20 just make an assumption that there's X impacts to,
21 you know, a certain acreage and go with that.

22 We did look at how many animals we
23 thought that particular habitat could support. So
24 it wasn't only, you know, just as an example,
25 impacting ten acres and therefore you mitigate

1 with 40. It was actually taking into account how
2 many actual animal the habitat could likely
3 support.

4 MR. BABULA: Judy, do you have anything
5 you'd like to add based on the testimony you've
6 heard today?

7 MS. HOHMAN: No, unless you want me to
8 just reiterate.

9 HEARING OFFICER CELLI: Well, just to be
10 clear, while we have these representatives there
11 were some questions earlier, there was a question
12 about the Endangered Species Act, California, and
13 then there was something asked about the --

14 MR. BABULA: Whether they're consulting
15 with the Service?

16 HEARING OFFICER CELLI: Yes. I'm just
17 trying to remember. I guess maybe we'll hear
18 about it on cross, but there was some need for
19 clarification from USFWS.

20 MR. BABULA: I could ask. Is the
21 applicant doing a section 10 consultation with the
22 Fish and Wildlife Service?

23 MS. HOHMAN: Yes, they are. We're
24 consulting with them on a section 10(a)(1)(B)
25 incidental take permit.

1 HEARING OFFICER CELLI: Okay.

2 MR. BABULA: I have no further
3 questions.

4 HEARING OFFICER CELLI: Thank you.
5 Applicant, cross, please. And if you remember
6 exactly what those things were earlier that we
7 needed their expertise on I'd appreciate it if you
8 asked those questions.

9 MS. LUCKHARDT: I believe they've
10 answered them. So, at this point I just have a
11 couple of questions.

12 CROSS-EXAMINATION

13 BY MS. LUCKHARDT:

14 Q Ms. Vance, do you support the analysis,
15 conclusions and mitigation contained in the final
16 staff assessment and the revised conditions of
17 certification? And when I talk about the revised
18 conditions of certification, I'm referring to
19 exhibit number 338.

20 MS. VANCE: Yes, I do.

21 MS. LUCKHARDT: And, Ms. Hohman, the
22 same question. Do you support the analysis,
23 conclusions and mitigation contained in the
24 biological resources section of the final staff
25 assessment and the revised conditions of

1 certification? Again, I'm referring to exhibit
2 number 338.

3 MS. HOHMAN: Yes, I do.

4 MS. LUCKHARDT: Thank you. I have no
5 further questions.

6 HEARING OFFICER CELLI: Thank you.
7 Cross by CURE.

8 MS. GULESSERIAN: Thank you.

9 CROSS-EXAMINATION

10 BY MS. GULESSERIAN:

11 Q Ms. Sanders, can you describe your
12 understanding of the length of the potential
13 recycled water pipeline from Rosamond?

14 DR. SANDERS: It's total, I believe, 39
15 miles. And the southern 23 miles of that are what
16 we surveyed.

17 MS. GULESSERIAN: Okay. For the
18 southern 23 miles, is it accurate that there are
19 two potential routes for the southern portion of
20 the route?

21 DR. SANDERS: We considered just one of
22 those routes. That was the one we analyzed. I
23 don't know what the status of the two routes;
24 someone else would have to answer that.

25 MS. GULESSERIAN: Okay.

1 DR. SANDERS: There's another route
2 inside Edwards Air Force Base, but we didn't
3 analyze that.

4 MS. GULESSERIAN: Okay, so for
5 clarification the FSA does not analyze the
6 pipeline route through the Air Force Base?

7 DR. SANDERS: Correct.

8 MS. GULESSERIAN: Okay. Can you
9 describe your understanding of the length of the
10 potential pipeline from California City?

11 DR. SANDERS: I believe it's 17-point-
12 what, 6 miles, is that correct? Yeah. Oh, by the
13 way, let me clarify. We do specify in the
14 appendix A of the final staff assessment that
15 there is an analysis being undertaken for that
16 Edwards Air Force Base line.

17 MS. GULESSERIAN: Okay. Are you
18 familiar with that analysis that's being
19 undertaken --

20 DR. SANDERS: No.

21 MS. GULESSERIAN: -- by the --

22 DR. SANDERS: We refer to it, though, so
23 that the reader can understand there is an
24 analysis being undertaken for that alternative.

25 MS. GULESSERIAN: So if you've referred

1 to it in your FSA, let's look at exactly what you
2 state about it.

3 MR. SOLORIO: Just wanted to note that
4 Edwards did a FONSI on the segment going through
5 the base. And that was docketed early on and is
6 included as part of the analysis. So technically
7 we did not analyze it, but we did refer to the
8 fact that it was analyzed by Edwards, and
9 therefore could be built, that particular segment.

10 MS. GULESSERIAN: Okay. So are you
11 familiar with that document that the Air Force
12 Base did for that segment of the pipeline?

13 MR. SOLORIO: I'm familiar with the
14 federal form that they submitted to us and --

15 MS. GULESSERIAN: That was docketed on
16 the website?

17 MR. SOLORIO: Correct.

18 MS. GULESSERIAN: Okay. May I enter
19 this exhibit into the record? It was -- we have
20 just established that they're familiar with the
21 document. It's cited in the FSA. It was served
22 to the parties last week as a potential exhibit.

23 What it is is the -- it's docketed on
24 the website. It's the Air Force Base's exemption
25 from environmental review for this pipeline

1 segment.

2 HEARING OFFICER CELLI: Okay, now,
3 applicant, any objection?

4 MS. LUCKHARDT: No objection.

5 HEARING OFFICER CELLI: I remember
6 seeing this come across docket some time ago.
7 Okay, no objection. And we are at 638 in CURE's
8 exhibits. So this would be exhibit 639.

9 MS. HEAD: Excuse me but for the sake of
10 the transcript did Mr. Solorio mention that that's
11 who was speaking?

12 MR. SOLORIO: If you want me to say it
13 now if that makes it any clearer.

14 MR. BABULA: She has his card.

15 MS. HEAD: I just think it needs to be
16 in the transcript so we know who was talking.

17 HEARING OFFICER CELLI: And what's your
18 name, ma'am?

19 MS. HEAD: I'm sorry. I'm Sara Head.

20 HEARING OFFICER CELLI: Sara Head.
21 That's who that was. And are you aware that that
22 was Eric Solorio who was speaking? Yes. The
23 court reporter is writing down the names.

24 MS. HEAD: Okay.

25 HEARING OFFICER CELLI: Is pretty much

1 aware of anyone who's sitting at the tables. And
2 if not, she'll signal. Thank you for that.

3 We were at exhibit 639. I'm going to
4 need a copy of that.

5 (Pause.)

6 HEARING OFFICER CELLI: So CURE's
7 exhibit 639 for identification, which is a request
8 for environmental impact analysis signed by Keith
9 Dias on August 21, 2009, with an attachment,
10 requirements checklist, which is three pages. And
11 on the back signed by Janet Lorraine, a
12 declaration by Janet Lorraine.

13 MS. GULESSERIAN: That is a declaration
14 that it's a true and correct copy of the printout
15 from the docket.

16 HEARING OFFICER CELLI: Okay. Since
17 there is no objection that'll be received into
18 evidence as 639.

19 MS. GULESSERIAN: Okay, so is this --
20 sorry.

21 HEARING OFFICER CELLI: And it's now
22 five after 6:00 --

23 MS. GULESSERIAN: Is this the
24 environmental, sorry, document? I'll speed it
25 along.

1 HEARING OFFICER CELLI: All right.

2 MS. GULESSERIAN: -- that you're
3 referring to? The exemption from environmental
4 review.

5 MR. SOLORIO: Yes, it is.

6 MS. GULESSERIAN: Okay. Besides this
7 exemption from environmental review that the Air
8 Force did, did you conduct any analysis of
9 potential impacts, significant impacts, under CEQA
10 for this segment of the pipeline route through the
11 Air Force Base?

12 DR. SANDERS: Who is the question for?

13 MS. GULESSERIAN: For you.

14 DR. SANDERS: So the question is did we
15 analyze other CEQA impacts?

16 MS. GULESSERIAN: Yes.

17 DR. SANDERS: I did not. I did the
18 biology report.

19 HEARING OFFICER CELLI: That's Ms.
20 Sanders who's speaking now.

21 MS. GULESSERIAN: And I think we
22 answered this, but just to clarify, you did -- in
23 the biological assessment did you analyze
24 biological resource impacts from this segment of
25 the route through the Base?

1 DR. SANDERS: No, we did not.

2 MS. GULESSERIAN: In the FSA did you
3 analyze potentially significant impacts for the
4 northern 17 miles of the route from Rosamond?

5 DR. SANDERS: If you mean about the same
6 as we did for the T-line and for the plant site,
7 yes.

8 MS. GULESSERIAN: Okay. Can you direct
9 me to where your conclusions are regarding that
10 portion of the pipeline segment?

11 DR. SANDERS: I don't know that we
12 necessarily separated it out. It's entirely the
13 disturbed roadbed, the shoulder of the road. So
14 the mitigation measures that apply to the plant
15 site, preconstruction surveys for owls, desert
16 tortoise, apply to the proposed pipeline, as well.

17 There was no habitat to be mitigated for
18 in that area because there was no native habitat.

19 So it's not included for compensatory mitigation.

20 I didn't break it down by components of
21 the project like that.

22 MS. GULESSERIAN: Okay, so in appendix A
23 when we have mapping of the entire pipeline route,
24 there is no similar mapping of vegetation type or
25 occurrence of species for --

1 DR. SANDERS: You'll find that in the
2 AFC.

3 MS. GULESSERIAN: So the applicant is
4 the one that has information regarding the
5 northern 17 miles of the pipeline route?

6 DR. SANDERS: Correct, and that's what
7 we used for our analysis.

8 MS. GULESSERIAN: Okay. Is it correct
9 that in the --

10 HEARING OFFICER CELLI: I'm going to
11 give another three more minutes of this, and then
12 we need to move on. This is still bio.

13 DR. SANDERS: Let me clarify that this
14 analysis in appendix A, we carried over the
15 analysis that we had in our FSA to appendix A, so
16 we covered the entire alignment. It's just that
17 we didn't go into detail discussing it since it
18 had already been addressed in the body of the
19 report.

20 MS. GULESSERIAN: In the body of which
21 report?

22 DR. SANDERS: The PSA addressed it
23 because at the time it was a gas pipeline. In the
24 FSA it was abandoned as a gas pipeline, but the
25 same impact would be occurring as a water

1 pipeline. So the impacts associated with pipeline
2 construction were addressed.

3 MS. GULESSERIAN: So it was evaluated in
4 the PSA, but wasn't carried over to the FSA?

5 DR. SANDERS: Yeah, it was. The FSA
6 includes appendix A, which incorporated the
7 analysis for the 17.6 miles of the northern
8 pipeline.

9 MS. GULESSERIAN: Okay, so I've looked
10 at appendix A and it says that, we did not
11 evaluate the 17-mile portion of the Rosamond
12 pipeline because it was evaluated by ESEP 2009.
13 Are you referring to an evaluation by the
14 applicant?

15 DR. SANDERS: Right, the applicant
16 analyzed the impacts, provided vegetation maps,
17 provided rare plant surveys. We used that in our
18 analysis in the preliminary staff assessment. And
19 the final staff assessment incorporates all the
20 measures that the PSA did, as well. The PSA
21 required avoidance and minimization measures based
22 on the surveys done on the 17.6-mile pipeline.

23 MS. GULESSERIAN: Okay, I'm looking for
24 the independent analysis of the northern 17 miles
25 of the Rosamond pipeline segment in the FSA. And

1 if you could help me, direct me to where that is I
2 would appreciate it.

3 HEARING OFFICER CELLI: -- question?

4 MS. LUCKHARDT: If it would help to
5 clarify the record, exhibit 87 is the Beacon Solar
6 Energy Project botanical and wildlife special
7 status species 2008 spring survey report.

8 MS. GULESSERIAN: I'm at --

9 MS. LUCKHARDT: And that's the place at
10 which the results of the survey effort on the gas
11 pipeline are reported, at least from Beacon's
12 side.

13 HEARING OFFICER CELLI: Thank you.

14 MS. GULESSERIAN: And so I'm looking to
15 find out where the evaluation by staff is
16 regarding what Beacon has submitted to staff.

17 DR. SANDERS: Our analysis was in the
18 PSA as to the impacts of construction of the
19 pipeline, 17.6 miles. And this map -- the
20 analysis in the PSA, and we used the information
21 from the PSA to come to our conclusions in the
22 FSA.

23 MS. GULESSERIAN: Okay, I'm going to
24 move on. Is your assessment of potential impacts
25 based on protocol surveys -- this is for the 23

1 miles of Rosamond pipeline -- is your assessment
2 of potential impacts based on protocol surveys for
3 desert tortoise and Mojave ground squirrel and
4 western burrowing owl?

5 DR. SANDERS: Yes.

6 MS. GULESSERIAN: You did --

7 DR. SANDERS: The ones conducted by the
8 applicant, correct.

9 MS. GULESSERIAN: You did protocol --

10 DR. SANDERS: No, no, I'm sorry --

11 MS. GULESSERIAN: -- the applicant did
12 protocol surveys?

13 DR. SANDERS: -- we relied on their
14 results, correct.

15 MS. GULESSERIAN: Okay. So you relied on
16 results of protocol surveys for the 23 miles of
17 the Rosamond pipeline segment?

18 DR. SANDERS: Excuse me, I apologize for
19 that. No, we assumed presence for desert tortoise
20 and for Mojave ground squirrel. And we assumed
21 burrowing owls are likely to occur there, as well.

22 (Parties speaking simultaneously.)

23 HEARING OFFICER CELLI: Is there
24 anything else, because that is already in their
25 testimony.

1 MS. GULESSERIAN: I'll skim through and
2 see if there's any vital questions.

3 HEARING OFFICER CELLI: Thank you.

4 MS. GULESSERIAN: Is it correct that
5 staff found impacts to only 11 acres?

6 DR. SANDERS: That's correct, temporary
7 impacts.

8 MS. GULESSERIAN: And you found direct
9 -- those are addressing direct impacts?

10 DR. SANDERS: Correct, direct impacts.

11 MS. GULESSERIAN: Okay. Is it -- in
12 table 5 you show that 11 acres --

13 DR. SANDERS: Table 5 of appendix A?

14 MS. GULESSERIAN: Yes. You show 11
15 acres of direct impacts to the creosote bush scrub
16 and two phases of saltbush scrub. Are those the
17 only plant communities that you're providing
18 mitigation for?

19 DR. SANDERS: The other -- there is some
20 creosote bush scrub and some saltbush scrub that
21 was highly disturbed, so, yes, we're providing
22 mitigation for the good quality habitat that we
23 thought supported the Mojave ground squirrels or
24 desert tortoise.

25 MS. GULESSERIAN: Okay. Is there any --

1 you have maps there that you're referring to which
2 are attached to appendix A --

3 DR. SANDERS: Um-hum.

4 MS. GULESSERIAN: -- that show a much
5 larger area of where this habitat is.

6 DR. SANDERS: Um-hum.

7 MS. GULESSERIAN: Where is the, where
8 are the maps or similar quantification of how it
9 got narrowed down to 11 acres?

10 DR. SANDERS: We describe in the method
11 system what assumptions we used to calculate
12 impacts. And we assumed a 25-foot corridor of
13 impacts, and we overlaid that on the vegetation
14 map to come up with that calculation you see in
15 table 5.

16 The permanent impacts are the ones that
17 were, I think, the booster station. It was some
18 pumping station, I can't recall, some feature that
19 wasn't going to be just part of the buried
20 pipeline.

21 MS. GULESSERIAN: Okay, --

22 HEARING OFFICER CELLI: That could be
23 found in exhibit 500.

24 MS. GULESSERIAN: Moving on, the 23
25 miles of Rosamond pipeline, the FSA states that 21

1 special status plants have the potential to occur
2 in table 2.

3 Of those plants do you know how many
4 flower outside of the July season, or the three
5 days in July that you looked at the site?

6 DR. SANDERS: I don't know off the top
7 of my head, but the flowering periods are the
8 species that we considered. There's a table with
9 that information, and we are requiring
10 preconstruction surveys for those plants.

11 MS. GULESSERIAN: The FSA states that
12 spring surveys would be conducted in spring 2010.
13 Did this occur?

14 DR. SANDERS: I believe that was --
15 wasn't that revised? Yes, that was one of the
16 revisions -- the copy I've got is the old copy,
17 but I think that was one of the conditions that
18 was revised.

19 HEARING OFFICER CELLI: And given that
20 spring 2010 started yesterday, that's not a lot of
21 time.

22 MS. GULESSERIAN: Okay. So the
23 information from spring surveys is not in the FSA
24 yet?

25 DR. SANDERS: Spring surveys, 2010

1 surveys is definitely not in the FSA.

2 MS. GULESSERIAN: Okay. If special
3 status species plants haven't been surveyed or
4 mapped is it possible to have direct impacts on
5 those species?

6 DR. SANDERS: That was a concern of
7 ours, so we worked with Mr. LaMoreaux, I believe
8 is how he pronounces his name. He said he had
9 sufficient flexibility in the way the pipe could
10 be aligned. He can shift it, and he can shift the
11 construction of work, can shrink it to 16 feet.
12 So we concluded that if we found a special status
13 plant occurrence along the pipeline we could avoid
14 it.

15 You do understand it's going down a dirt
16 road? Most of the area that's been disturbed is
17 already just a dirt road.

18 MS. GULESSERIAN: Can you clarify who it
19 is you just referred to?

20 DR. SANDERS: Oh, excuse me, one of the
21 co-authors, Carolyn Chainey-Davis was the botanist
22 who conducted the surveys and did the vegetation
23 mapping.

24 MS. GULESSERIAN: And so just to
25 clarify, did you just say that there's enough

1 flexibility to move the pipeline?

2 DR. SANDERS: Apparently so, apparently
3 you can shift it enough --

4 MS. GULESSERIAN: So wouldn't that
5 change --

6 DR. SANDERS: -- to avoid an occurrence
7 of --

8 MS. GULESSERIAN: Wouldn't that change
9 your analysis of the narrowed down only 11 acres
10 are going to be impacted, have direct impacts?
11 Wouldn't that change that analysis?

12 DR. SANDERS: No. If you're within a
13 25-foot-wide corridor and you can shift it within
14 that corridor and shrink it to a narrower pipeline
15 construction zone, that wouldn't change the
16 analysis.

17 MS. GULESSERIAN: Well, are there any
18 maps that show where this 11 acres specifically
19 is, or is it just your table 5?

20 DR. SANDERS: These maps show the
21 distribution of the plant size and it shows the
22 path of the pipeline.

23 MS. GULESSERIAN: Right. And it shows
24 much more than, it's not the number in front of
25 me, but much more than 11 acres being potentially

1 impacted.

2 I think you heard Mr. Bias' testimony
3 that it shows potential impact is 4,000 acres of
4 plant communities.

5 DR. SANDERS: That was the part that
6 confused me.

7 MS. GULESSERIAN: And then it narrowed
8 down to 11 acres. So I'm wondering where those 11
9 acres exactly are that you've calculated. At
10 least, is it in the FSA?

11 DR. SANDERS: In the appendix A. Let me
12 clarify. You're not asking about how the 4000
13 acres shrank down to 11 acres? Are you asking
14 that?

15 MS. GULESSERIAN: Well, that's what I
16 asked earlier. And now we're back to it. If you
17 found 11 acres is going to be impacted, only 11
18 acres is going to be impacted because you're just
19 looking strictly at direct pipeline construction
20 impacts only.

21 DR. SANDERS: Um-hum.

22 MS. GULESSERIAN: I'm wondering where
23 those 11 acres are, and then when you --

24 DR. SANDERS: Okay, let me clarify.

25 MS. GULESSERIAN: -- shift the pipeline

1 to another area, how do you know that it's covered
2 within that very narrow mitigation or impact area
3 that you found?

4 DR. SANDERS: Let me clarify how the --

5 MS. GULESSERIAN: Without anything to
6 look at in that section?

7 DR. SANDERS: Let's make sure everyone
8 understands. The 4,000 acres is the area that we
9 mapped, vegetation, correct? So that's clear
10 enough. That's not an impact area, that's just a
11 1,000-foot-wide, or the 2,000-foot-wide corridor
12 in which we mapped vegetation.

13 Then within that we estimated a 25-foot-
14 wide corridor down the middle of that. And within
15 that we mapped impacts to native vegetation.

16 Now, there are more than 11 acres of
17 impacts. There was something like 90 acres of
18 impacts, mostly they're dirt roads.

19 So the amount that's a permanent impact,
20 the 1.84 acres or so permanent impacts, were the
21 areas that will be occupied by permanent
22 structures. And there's some flexibility in how
23 that can be arranged.

24 HEARING OFFICER CELLI: I'm glad we
25 clarified that, because that was already testified

1 to earlier. It's now 20 after 6:00, and I think
2 that we've really got to move on.

3 So, if we can, please, take a look at
4 your notes. See if there's anything -- we've been
5 pretty generous in the area of biology. This
6 started three hours ago. It was supposed to be an
7 hour and 40 minutes.

8 MS. GULESSERIAN: If no surveys have
9 been conducted what is the basis for the FSA
10 appendix A statement that special status plants
11 could potentially occur outside, but adjacent to
12 the construction footprint, where roads abut
13 undisturbed habitat and creosote bush scrub and
14 saltbush scrub habitat? On page 4.2-150.

15 DR. SANDERS: You know, I don't have a
16 page 4.2-150. Are you talking about the FSA or
17 the appendix? I think I have different numbering.

18 That's correct. You could find special
19 status plants adjacent to the construction
20 footprint, and they would need protection. That's
21 one of the reasons we're requiring surveys is so
22 you can implement protection from inadvertent
23 impacts. You fence them and you make everybody
24 aware of them, and you stay away from them.

25 MS. GULESSERIAN: Okay, so do you know

1 yet where those special status plant species are
2 located?

3 DR. SANDERS: No; you'd need surveys to
4 find that out.

5 MS. GULESSERIAN: Okay.

6 HEARING OFFICER CELLI: We have surveys
7 coming up, is that correct, in the spring of this
8 year?

9 DR. SANDERS: That is up to the
10 applicant, when they want to conduct their
11 surveys. This no longer specifies it has to be in
12 spring of 2010, the revised condition.

13 HEARING OFFICER CELLI: Very good. Is
14 there anything else, Ms. Gulesserian?

15 MS. GULESSERIAN: What does the
16 evaporation pond netting mitigate?

17 DR. SANDERS: Potential impacts from a
18 couple different sources. One, birds can drink or
19 forage from the pond water and it can have
20 concentrations of toxic elements or salt, as in
21 Harper Lake where there's some water fowl death
22 from salt toxicosis. So it's keeping birds out of
23 the water and any harm.

24 It's also preventing ravens from being
25 attracted to the site, and then sticking around

1 and preying on desert tortoise juveniles nearby.

2 MS. GULESSERIAN: And how does it
3 prevent ravens and other migratory birds from
4 being attracted to the area?

5 DR. SANDERS: Well, I think they are
6 still attracted. And I think we had some measures
7 in there to also have some bird deterrence. But
8 it keeps them from getting to the water.

9 MS. GULESSERIAN: Okay, thank you. I
10 have no further questions.

11 HEARING OFFICER CELLI: Thank you. Any
12 redirect?

13 MR. BABULA: No.

14 HEARING OFFICER CELLI: Thank you. So
15 that takes care of biology.

16 MS. GULESSERIAN: We have other -- I
17 have no further questions for Ms. Sanders.

18 HEARING OFFICER CELLI: You know, it's
19 20 after 6:00. We started at a quarter after
20 3:00.

21 MS. GULESSERIAN: Just a few questions
22 of the agency.

23 HEARING OFFICER CELLI: What are the
24 questions? I'd like to hear the questions.

25 MS. GULESSERIAN: Okay.

1 HEARING OFFICER CELLI: So maybe we can
2 speed this up.

3 MS. GULESSERIAN: I would like to know
4 from Fish and Wildlife Service what they define
5 sign as. We were not able to gather from the
6 applicant what the sign was, whether sign
7 indicated presence of the species.

8 So, since desert tortoise is a federally
9 listed species, that would be in the Fish and
10 Wildlife Service's area of expertise.

11 HEARING OFFICER CELLI: We have
12 testimony that sign doesn't necessarily mean that
13 there's a presence. We've already heard from Dr.
14 Karl.

15 MS. GULESSERIAN: I would like to know
16 whether the Fish and Wildlife Service agrees or
17 disagrees, then.

18 HEARING OFFICER CELLI: So, let's hear
19 on that.

20 EXAMINATION

21 BY HEARING OFFICER CELLI:

22 Q Do you agree, did you hear Dr. Karl's
23 testimony, Ms. Hohman?

24 MS. HOHMAN: Yes.

25 HEARING OFFICER CELLI: Do you agree or

1 disagree? Would you explain your position on the
2 presence of sign for desert tortoise?

3 MS. HOHMAN: I agree with Dr. Karl the
4 presence of sign in all cases -- can you hear me
5 now?

6 HEARING OFFICER CELLI: Please speak
7 right into it.

8 MS. HOHMAN: Okay. The presence of sign
9 is an indication that tortoises might be present
10 and might be using the area. It's not necessarily
11 an indication that there are resident animals at
12 the site.

13 MS. GULESSERIAN: Okay, thank you.

14 CROSS-EXAMINATION

15 BY MS. GULESSERIAN:

16 Q So it's an indication of presence, but
17 not an indication of --

18 MS. HOHMAN: Residency.

19 MS. GULESSERIAN: Thank you.

20 HEARING OFFICER CELLI: I just wanted to
21 know if you had any further questions and what
22 those questions were.

23 MS. GULESSERIAN: Since I'm not able to
24 ask them, I just have to do a quick skim of them,
25 if you wouldn't mind.

1 Have you completed your review of the
2 incidental take permit application?

3 MR. BABULA: I'm going to object to
4 questions about that. This is not relevant to our
5 proceeding, that's a federal action.

6 HEARING OFFICER CELLI: Where are you
7 going with that, Ms. Gulesserian?

8 MS. GULESSERIAN: The Commission needs
9 to determine compliance with LORS. The final
10 staff assessment does not make a conclusion
11 regarding whether there is consistency with the
12 federal Endangered Species Act. And I'm trying to
13 figure out whether we're done with that and we can
14 correct the FSA, or whether it's still
15 outstanding, so that the Commission can make a
16 decision on this matter.

17 HEARING OFFICER CELLI: My experience
18 has been in the past that biology has a table of
19 the LORS, and it says whether there is compliance
20 with the LORS. Is there any mention of compliance
21 with the federal Endangered Species Act in the
22 FSA?

23 MR. BABULA: Yes, it's in there.

24 HEARING OFFICER CELLI: That's what I
25 would imagine.

1 MS. GULESSERIAN: If they want to not do
2 anything further, that's fine with me.

3 HEARING OFFICER CELLI: My concern is
4 that you're asking questions that are readily
5 available. They're available to all parties
6 equally. And it isn't covering new ground. So I
7 just, I'm trying to get the most out of your
8 cross-examination without having to belabor points
9 that have already been made and re-cover ground
10 we've already covered.

11 MS. GULESSERIAN: I have a question for
12 Julie Vance, one question.

13 HEARING OFFICER CELLI: Regarding?

14 MS. GULESSERIAN: And that would be
15 regarding Leitner's assessment of habitat for
16 Mojave ground squirrel. And that would be, have
17 there been high numbers of Mojave ground squirrel
18 detected via trapping in areas not predicted to
19 support Mojave ground squirrel based on habitat
20 and soil type, alone?

21 MS. VANCE: Yes, there has.

22 MS. GULESSERIAN: Thank you. No further
23 questions.

24 HEARING OFFICER CELLI: Thank you.
25 Redirect?

1 MR. BABULA: I have nothing further.

2 HEARING OFFICER CELLI: Okay. Now, the
3 record is closed on biology. We will take a break
4 now. There's pizza available out in the lobby, I
5 guess. We need to continue to go forward.

6 What I'd like to do at this time is open
7 up the podium for public comment. It's now 6:30
8 about. Let's see if we can get, how many people
9 here are members of the public that wanted to make
10 a comment? I've got a show of hands of three
11 people.

12 MR. BABULA: We still have hazardous
13 material --

14 HEARING OFFICER CELLI: Yeah, I
15 understand that, but I'm going to get rid of some
16 of -- there are people that have been staying,
17 waiting around a long time to make public comment.
18 I think they need to have an opportunity to do
19 that.

20 I just want to say I'm not asking you to
21 come up yet, I just want to see if you're here.
22 Is Corky Corcoran here? Okay, stay here, Corky.
23 Jack Martin? Jack Martin is gone. Kim Collins,
24 are you here? That's fine, stay here.

25 Eleanor Owens, are you here? Not.

1 Wally Melendez, are you here? Okay, he's no
2 longer here. And then Dawn Martin, are you here?
3 Dawn Martin is here, also.

4 Okay. What we're going to do is the
5 Chairman's going to stay up here and we are going
6 to hear public comment. If people want to go grab
7 themselves a pizza, they can do that. And we are
8 going to get back on the record in about 15
9 minutes, and we will be taking evidence on
10 hazardous waste.

11 We also stated that there was going to
12 be public comment at 7:00 p.m. So if any members
13 of the public are wanting to make a comment at
14 7:00, we'll give them that opportunity.

15 I also want to get online and see if
16 there's anyone online. Galen is the only person
17 let online, I'm clear.

18 So, with that, I'm going to open the mic
19 for Lorelei Oviatt, she is here from the County of
20 Kern Planning Department.

21 MS. LUCKHARDT: I'm assuming despite
22 your comments a moment ago that public comment
23 will be on the record.

24 HEARING OFFICER CELLI: Yes, public --
25 are we not on the record? We're on the record.

1 MS. LUCKHARDT: Okay.

2 HEARING OFFICER CELLI: Did I say we
3 were off the record?

4 MS. LUCKHARDT: Yes.

5 HEARING OFFICER CELLI: I'm sorry, we're
6 on the record. We never should have gone off the
7 record. I'm sorry if I said that.

8 Ms. Oviatt, please.

9 MS. OVIATT: Thank you. I'm Lorelei
10 Oviatt; I'm the Acting Planning Director of the
11 Kern County Planning Department.

12 Supervisor Maben, who is the Kern County
13 Board Member for the Second District, was here
14 earlier this morning. He had to leave. He has
15 delegated that authority to me to speak for the
16 Kern County Board of Supervisors.

17 On December 1, 2010, the Kern County
18 Board of Supervisors did review the Beacon Solar
19 project in a public hearing. And did authorize us
20 to represent to your Commission their position on
21 this matter.

22 The first thing I'd like to note is that
23 I have provided a letter to you with our comments.

24 And in that letter I'd like to make sure that you
25 are clear that we have the highest regard for the

1 work that your staff, specifically Eric Solorio,
2 has done in working with the local agencies,
3 working with my staff, and providing answers and
4 feedback in a very responsive manner. And we'd
5 like to commend you for his work.

6 And, as well, the applicant has been
7 very involved with the planning department in
8 attempting to answer our questions and provide
9 information to the community.

10 We do support this project. We believe
11 that the mitigation for water and other
12 environmental impacts that we brought up earlier
13 in the process have been addressed, with the
14 exception of public services.

15 On January 15th we did provide to Mr.
16 Solorio a letter, along with a backup of
17 information, regarding our opinion that there is a
18 deficiency in the public services analysis.

19 Due to the fact that we have done a
20 comprehensive study of growth for the entire
21 county, and provided that document, the capital
22 improvement facilities plan, that shows what
23 impacts would be on public facilities such as
24 fire, sheriff, libraries, countywide protection,
25 even if we received full taxes for development.

1 And that by 2030 there would be a need for
2 these additional facilities.

3 As you know, under the California
4 Environmental Quality Act, the impact on public
5 services, this is only on facilities, not on
6 staffing. We note that Kern County is a highly
7 industrialized county. We have a lot of
8 experience with industrial projects.

9 We understand they have an internal fire
10 system, which you will be talking about during
11 hazards, and may already have talked about.
12 However, it is insufficient without the backup of
13 the regional response teams, including the hazmat
14 teams, the county coroner, the fire and sheriff
15 investigation, and the 9-1-1 service.

16 We are proposing that this solar-thermal
17 project, which will only be providing because of
18 the tax relief that they receive from the
19 legislature, \$440,000. Your own final staff
20 assessment indicates that if they could be
21 reassessed they would be able to provide \$4.2
22 million.

23 Our capital improvement facilities plan,
24 which we have provided, shows that even with full
25 taxes, even with the \$4 million, it will not keep

1 up with the necessary facilities.

2 Therefore, the county administration
3 office, directed by the board of supervisors, has
4 asked that I request that your Commission put a
5 condition of certification -- is that how you say
6 it? Certification, sorry. It's been a long day
7 -- that requires the payment of a public services
8 mitigation fee for the specific categories of
9 countywide public protection, sheriff patrol and
10 investigation and fire protection at a not to
11 exceed \$1,060,439 a year.

12 How we came to those calculations in our
13 backup materials is provided. You will note that
14 the letter you received says \$1.5 million. We
15 have consulted with the county administrative
16 office who has revised this down to \$1,060,439 a
17 year, the final amount each year to be determined
18 by the Kern County Board of Supervisors at a
19 public hearing, and paid by April 30th of each
20 calendar year. The presentation to the board of
21 supervisors to include a annually adjusted for
22 inflation.

23 The intent of this will be to provide
24 the board of supervisors discretion in regards to
25 the amount of jobs that are being produced by this

1 project. And to look at other revenue sources
2 that may come in that could offset the impacts of
3 these facilities.

4 We want to be fair to this solar-thermal
5 project, which will provide much-needed jobs and
6 contribute to the 33 percent that's necessary for
7 renewable energy.

8 Kern County is the center of renewable
9 energy with our wind, our geothermal and our
10 biodiesel plant, and we certainly are supportive
11 of appropriately sited projects.

12 With that, we would ask that your
13 Commission consider allowing staff to craft the
14 language for this. And we look forward to any
15 questions that you may have. We appreciate very
16 much your coming out to California City so that
17 our local citizens can testify in person.

18 Thank you.

19 HEARING OFFICER CELLI: Thank you, Ms.
20 Oviatt.

21 Is Dawn Martin here?

22 MS. LUCKHARDT: Do you want us to
23 respond or not at this time?

24 HEARING OFFICER CELLI: Well, this is
25 public comment.

1 MS. LUCKHARDT: Fair enough.

2 HEARING OFFICER CELLI: This isn't an
3 informational hearing. Usually in an
4 informational hearing we let the parties sort of
5 respond. I think that if you wanted to have a
6 conversation offline, that could happen. But for
7 our purposes this is an evidentiary hearing and we
8 need to hear people's discussion of the evidence.

9 So, with that, Ms. Martin, please.

10 MS. MARTIN: My name is Dawn Martin, I
11 live in Rancho Seco about three-eighths of a mile
12 north of the plant site.

13 On the visual resources, the KOP-6
14 picture is from where visitors only, I'm not going
15 to climb that mountain and look down on the site.

16 And I don't have a plane to fly over it.

17 So, there's no one that lives up there.

18 So it's only for visitors and hikers. They would
19 only be there to see it one time, and not go back
20 through.

21 Jawbone Station, it's for visitors only
22 also. So both of those pictures do not include
23 me. I live on the ground; I look straight across
24 at this site.

25 I do believe we can live with it, but it

1 would be awfully nice to have a picture from the
2 ground, from where I live, to see what it might
3 look like in the future when it's built.

4 We know light reflection from computers,
5 people working in the room and whatnot, is
6 distraction once in awhile. We know that sitting
7 there watching cars go by, they reflect every once
8 in awhile and it catches your eye. So light
9 reflection is sometimes disturbing.

10 And so in that, I don't know exactly how
11 they would grade it to bring it down to a level
12 where it wouldn't be reflective to me. But that
13 would be interesting to know how that's going to
14 be done.

15 The other thing is is on the soil and
16 water usage. Eight million cubic yards of soil to
17 be moved in five months, that's going to be a lot
18 of trucks, a lot of equipment moved in.

19 And about 8100 acre feet of water to be
20 used in five months, that's a lot of water, very
21 fast. This is a lot of use of groundwater that's
22 disturbing to me because I'm the president of the
23 water association out there, and we don't use that
24 much water in a long time. We only use maybe 4 or
25 5 acre feet of water a year.

1 And is this a five-year project until
2 told the wastewater is going to be used? And in
3 that time how much water will be used a year to
4 get the plant running and over the 8,000 acre feet
5 of water?

6 HEARING OFFICER CELLI: Mr. Solorio, did
7 you want to speak to that?

8 MR. SOLORIO: Sure, I can address that.
9 Staff has recommended and left two alternatives
10 on the table for the applicant to select from.
11 That is either connected to the California City
12 tertiary plant or the Rosamond plant.

13 If they connect to the Rosamond plant
14 that water would be available for the volume, any
15 construction. If they decide to go with the Cal
16 City option, that will take five years to phase
17 in. So they will use groundwater and phase out
18 approximately 20 percent of the groundwater a year
19 for five years.

20 MS. MARTIN: Okay. So the 153 acre feet
21 of water per year, will that just be for what kind
22 of usage? Groundwater.

23 MR. SOLORIO: Again, if they went to
24 Rosamond then the 153 would be for operations, the
25 plant, for the steam turbine generator and the

1 majority for mirror washing.

2 And likewise of Cal City. But the 150
3 wouldn't be there until the end of the five years.

4 MS. MARTIN: Okay, so all the
5 groundwater usage will end in five years?

6 MR. SOLORIO: Correct.

7 MS. MARTIN: Okay. I want to thank you
8 all for being here and answering our questions
9 and helping us out. And we would love to see this
10 project go forward.

11 HEARING OFFICER CELLI: And thank you
12 for your comments.

13 MR. SOLORIO: If I may, I just want to
14 clarify something. When you asked if all the
15 groundwater usage would end now, the 153 -- excuse
16 me, Ms. Martin.

17 MS. MARTIN: Yes.

18 MR. SOLORIO: Ms. Martin, I'm sorry, I
19 wanted to clarify my answer to you. When you
20 asked when all this groundwater use would cease.
21 If they connected to Cal City, the phase out would
22 cease, but they would continue to use 153 acre
23 feet a year going forward for plant operations.

24 MS. MARTIN: Okay, thank you.

25 HEARING OFFICER CELLI: Thank you for

1 clarifying that. Corky Corcoran, come on down.

2 MR. CORCORAN: Thank you. I would first
3 like to thank the Commission for having this
4 hearing out in the sticks instead of at the state
5 capital. Lets the people know that our public
6 servants are looking out for us.

7 I'm here as a resident of Cal City. And
8 I am highly favorable for this project, for the
9 jobs it will create, and the clean energy. We all
10 need more renewable energy. And I have had
11 business dealings with FPL and their incarnations
12 at Harper Lake and California City -- I'm sorry,
13 Kramer Junction. And find them to be a highly
14 commendable, environmentally conscious company and
15 I think they are a very good steward of the land.

16 So I am very much in favor for the
17 economy and the fact that the reputation of the
18 people involved.

19 Thank you.

20 HEARING OFFICER CELLI: Thank you for
21 your comments. And thank you for sticking around
22 all day long, because I've seen you here.

23 We have Kim Collins. Mr. Collins,
24 please.

25 MR. COLLINS: Hello, my name is Kim

1 Collins; I live here in California City. I gave a
2 copy of a letter to the man in the back back
3 there. Did he give you guys a copy of this
4 letter?

5 MR. DAVIS: I've got them right here.
6 I'll give them your copy.

7 HEARING OFFICER CELLI: Thank you.
8 Because you gave it to the Public Adviser, we'll
9 get a copy.

10 MR. COLLINS: Okay. It's my letter that
11 I wrote and I emailed it and mailed it on
12 Wednesday of this last week. It's a one-page
13 letter. I'm requesting that it goes in the
14 official record. It's just a little one-page
15 letter in support of the project.

16 And I wanted to cover a few issues,
17 actually questions and maybe you can answer them,
18 or the energy people can answer them.

19 I'm curious, how much has Nextera Energy
20 spent to date on trying to get this project up and
21 running? Is that a substantial amount? Would
22 they care to comment?

23 HEARING OFFICER CELLI: What was your
24 question, sir?

25 MR. COLLINS: I was curious, to date how

1 much Nextera Energy has spent to get this project
2 to the point where it is today.

3 HEARING OFFICER CELLI: I'm sure they've
4 spent a lot. But they actually don't have to give
5 us that information. That's their private
6 business.

7 MR. BUSA: As one example, part of the
8 public record is we did purchase the property, and
9 that was in excess of \$10 million-plus, just for
10 the purchasing of the property.

11 MR. COLLINS: The point I'm getting to
12 is the lady sitting next to me over here with SURE
13 (sic), and I see that she has a big stack of
14 papers on this table that SURE presented to the
15 Energy Commission, to the proponents and everybody
16 else.

17 And to me, personally, I think what
18 they're doing is kind of a travesty, and all the
19 paperwork that they're compiling and submitting to
20 all you guys. I think it's a travesty that this
21 organization is being allowed to submit all this
22 paperwork and wasting a lot of important time and
23 effort, and dragging this program on. And
24 stalling out the completion of your findings and
25 issuance of a permit to operate the plant.

1 I think this is a political travesty,
2 myself. That's the way I look at it. What
3 they're doing, I think it's really bad. The
4 unions, environmentalists are allowed by
5 California State law to submit so many papers.
6 She has piles of papers over there.

7 And you guys there, you guys there, and
8 you there have to answer and submit and do
9 research and answer all these different questions
10 and documents. And you have to provide people to
11 testify. I think all it does is just drag on this
12 whole process.

13 And, to me, I think this is one reason
14 why some people really don't want to do business
15 in the State of California. Because travesties
16 like this are allowed to happen in our state.

17 Me, personally, I think it's a travesty
18 on how much paperwork they're allowed by law to
19 submit, all their different requirements that
20 they're putting on the Commission, you know, and
21 on the proponent. And requesting this and
22 requesting that. I think it's a travesty.

23 And I had a question for Kenneth. I
24 would like to say thank you for what happened with
25 SURE. You not allowing their last-minute, all

1 their last-minute filings not to be a part of the
2 record. Because I think it was a travesty what
3 they did, try to file last-minute paperwork. Just
4 another pile of, you said three inches tall. More
5 paperwork for everybody to look at and compile and
6 try to disseminate. I think that was a travesty
7 and I'm glad that you didn't allow all that stuff
8 to be submitted into the record. I wanted to
9 thank you personally for that.

10 And Kenneth, I had another question,
11 too, sir. Do you know a date when they might be
12 actually issued a permit to start construction?

13 HEARING OFFICER CELLI: What I can tell
14 you is this. Right now we're in the middle of
15 evidentiary hearings. If all goes well we'll be
16 done tonight.

17 It takes approximately 60 days. Because
18 what's going to happen is there's a transcript
19 that's going to be prepared. Based on this
20 transcript the parties are going to create briefs,
21 which are essentially argument position papers on
22 how they feel about this or that, the issues
23 raised.

24 After I get the briefs and when I take
25 in all of the evidence, and there's a lot of

1 evidence to take in, and read anything new, it
2 takes approximately 60 days to write the decision.

3 The decision is the Presiding Member's
4 Proposed Decision. And Chairman Douglas, who's
5 the Chairman of the Commission, happens also to be
6 the Presiding Member of this Committee. Also,
7 he's not here today, but Commissioner Byron will
8 be the Associate Member.

9 Basically the opinion is presented and
10 written by the Committee to the full Commission at
11 a business meeting. And that usually lasts, that
12 occurs probably within let's say 30 days of the
13 date of the issuance of what we call a PMPD, the
14 Presiding Member's Proposed Decision.

15 At that hearing if the proposed decision
16 is adopted, then that's the date of the license.
17 So we're looking at about 90 days out, maybe 100
18 days.

19 I just want to mention something else,
20 too, just because it can't go without mention.
21 The way our process is set up is we want to have
22 maximum input from the public and interested
23 parties, so that when the day comes if this
24 project is licensed, that what we have is the best
25 possible project.

1 And the way that we insure that is we
2 have a Public Adviser, and we have a system that's
3 designed essentially to beat the bushes to call
4 out anybody we can who's interested in this
5 project, so that those people will make comment.
6 And so that when the final decision is made, every
7 point of view has been allowed, accepted,
8 considered, addressed.

9 And so I want to say that CURE provides
10 an important dimension to the work that we do
11 here. Because what they're doing is basically
12 keeping the applicant and the staff honest.
13 They're questioning; they look at the evidence.

14 You know, I have to tell you,
15 Mr. Collins, if their investigation turned up
16 something highly toxic out there that could have
17 been poisonous to your community then you would
18 have been very grateful to have those people here,
19 as any of us would.

20 And so I just want to make the point
21 that for our society to work, it takes both sides.
22 And we want to hear from all points of view.

23 And, yes, it may seem inefficient and
24 slow, but in the end we can say, well, we heard
25 from everybody. And so that's what we're trying

1 to do. And for that we will have a better
2 project, a better product and a better project.

3 And so while it may seem like a travesty
4 if you're in a hurry to hurry up and get a project
5 built, sometimes you need to stop and think that,
6 yes, once that project's up, no one's going to rip
7 it out for a long time. And if you're going to
8 put it in there, you better make sure that we're
9 not doing something wrong to some species or
10 something, whatever.

11 So we want to make sure that there are
12 no impacts; all the impacts are mitigated. And
13 that's why we do it. And that's why they're here.
14 And so actually they're a service.

15 MR. COLLINS: Another question. When
16 you issue the final permit is Nextera prepared to,
17 how soon after you get the final okay, how soon
18 would they actually be moving some of that dirt?

19 HEARING OFFICER CELLI: I have no idea.

20 MR. COLLINS: Would they care to
21 comment?

22 MR. BUSA: I just would comment that
23 there are a number of months of prework before
24 dirt gets moved. There are a lot of conditions.
25 One comes to mind, like cultural studies that need

1 to be done for many months actually prior to us
2 moving dirt. So, you know, it wouldn't be before
3 the end of the year if we stuck to Mr. Celli's
4 schedule, maybe even a little bit longer.

5 MR. COLLINS: Okay, so possibly you
6 could start to move dirt early part of next year,
7 possibly?

8 MR. BUSA: At the end of this year or
9 early next year, yeah, that would be the earliest.

10 MR. COLLINS: Okay. In closing I'd just
11 like to thank you all for coming here from
12 Sacramento so you can hear what we, as the local
13 community, have to say. And thanks for Nextera
14 coming all the way from Florida to be here and to
15 take public comments and meet with all of the
16 local people, and meet with SURE sitting here, and
17 everybody.

18 And hopefully by next year they can be
19 digging up dirt and getting the project up and
20 running. Thank you for your comments.

21 HEARING OFFICER CELLI: Thank you for
22 your comments. Appreciate your participation.

23 I have Wally Melendez. Did Wally come
24 back? There he is. Come on down.

25 MR. MELENDEZ: Good evening, Mr. Celli.

1 HEARING OFFICER CELLI: Good evening.

2 MR. MELENDEZ: My name is Wally
3 Melendez. I live in California City.

4 So, Mr. Celli, we're looking at maybe, I
5 didn't hear it too well, but maybe around the
6 middle of this year or later in the year we might
7 start this project?

8 HEARING OFFICER CELLI: Did you give an
9 estimate to the start time?

10 MR. BUSA: If you gave me a 90- to 100-
11 day permit time, towards the end of the year or
12 into early next year by the time we actually are
13 moving dirt, with many months of prework.

14 MR. MELENDEZ: Okay. And from an
15 article that was in The Valley Press, well, not
16 The Valley Press, but I heard it here in this
17 meeting, approximately 1,000 construction workers
18 are going to be working on and off on that project
19 at different times. And it's supposed to last for
20 about five years, the construction?

21 MR. BUSA: The peak construction force,
22 you're correct, is about 1,000 workers. And it's
23 actually a little over two years, two years to 30
24 months of actual construction,

25 MR. MELENDEZ: Okay, about two and a

1 half years?

2 MR. BUSA: Yes.

3 MR. MELENDEZ: Well, I wish you luck
4 with all your permits, applications, licenses and
5 so on. I'm a master electrician and I ran for
6 mayor two years ago. And I'm running for mayor
7 this year, again.

8 And I'm just not running to run, I
9 intend to win. So I hope that I'll be helpful
10 with your project. And if you live around here,
11 maybe you'll vote for me.

12 (Laughter.)

13 MR. MELENDEZ: So, Mr. Celli, what is
14 the name of the secretary of the California --
15 what is it, Commission?

16 HEARING OFFICER CELLI: We're actually
17 the --

18 MR. MELENDEZ: Energy Commission.

19 HEARING OFFICER CELLI: The California
20 Energy Commission is a commission, it's not an
21 agency where we're -- it's not a --

22 MR. MELENDEZ: It's not a department?

23 HEARING OFFICER CELLI: Not a
24 department.

25 MR. MELENDEZ: Not a department, it's a

1 commission. So it has a Chairman.

2 HEARING OFFICER CELLI: That's right.

3 MR. MELENDEZ: What is the name of the
4 Chairman?

5 HEARING OFFICER CELLI: Karen Douglas.

6 PRESIDING MEMBER DOUGLAS: I'm the
7 Chair.

8 MR. MELENDEZ: Oh, Karen. Very nice to
9 meet you.

10 (Laughter.)

11 MR. MELENDEZ: Very nice to meet you.

12 PRESIDING MEMBER DOUGLAS: It's a
13 pleasure to meet you, as well.

14 MR. MELENDEZ: Thank you, Karen. Okay,
15 I think that exhausted my questions, Mr. Celli.
16 Again, good luck.

17 HEARING OFFICER CELLI: Thank you.

18 MR. MELENDEZ: And, oh, one thing more.
19 I don't know if you've been around here at night.
20 The streetlights are almost negligent in the
21 city. How can we get electricity from your plant
22 to light up lights, streetlights, in this town?

23 HEARING OFFICER CELLI: Well, it has to
24 be built first, for starters.

25 (Laughter.)

1 MR. MELENDEZ: And then maybe we might
2 be able to siphon some off, is that what you're
3 saying?

4 (Laughter.)

5 HEARING OFFICER CELLI: I don't know,
6 but I think you might want to talk to FPL,
7 Nextera.

8 MR. MELENDEZ: FPL stands for what?

9 HEARING OFFICER CELLI: I meant Nextera,
10 formerly known as Florida Power and Light.

11 MR. MELENDEZ: Okay.

12 HEARING OFFICER CELLI: I want to thank
13 you for your comments and wish you the best of
14 luck in your run for mayor.

15 MR. MELENDEZ: Thank you, Mr. Celli.

16 HEARING OFFICER CELLI: Thank you. And
17 just for the record, I pronounce my name Celli,
18 it's Italian.

19 MR. MELENDEZ: Okay.

20 HEARING OFFICER CELLI: Like many
21 cellos.

22 MR. MELENDEZ: That's a good thing.

23 HEARING OFFICER CELLI: I know it's
24 annoying but I insist on people pronouncing it
25 correctly.

1 MR. MELENDEZ: I should have known.

2 HEARING OFFICER CELLI: I had Eleanor
3 Owens. Did Eleanor Owens come back? That's
4 great. I thought we lost you.

5 MS. OWENS: Not at all. My name's
6 Eleanor Owens and I do not live here; I live in
7 neighboring North Edwards. And I'm the proud
8 owner of a home solar electric system,
9 photovoltaic, started by my late husband. And do
10 know how valuable it can be.

11 But my question, I just have a three-
12 part question. When this project is up and
13 running, who will own it, operate it and maintain
14 it?

15 HEARING OFFICER CELLI: That would be --
16 well, Nextera is the applicant right now. And
17 assuming they don't sell it to someone else, then
18 it would be Nextera's project.

19 MS. OWENS: For all parts?

20 HEARING OFFICER CELLI: If they give it
21 away to someone else --

22 MR. BUSA: And just to mention, since
23 you are from North Edwards, you may be familiar we
24 have a project over at Kramer Junction right now.

25 MS. OWENS: I do know that.

1 MR. BUSA: We are in partnership over
2 there, but we are the operator and partial owner
3 of that site called SEGS, over at 395 and 58.

4 MS. OWENS: Yes, I do know that. Thank
5 you very much.

6 HEARING OFFICER CELLI: Thank you very
7 much for your comments. Is Jack Martin still
8 here?

9 MR. SPEAKER: No, he went home.

10 HEARING OFFICER CELLI: Michael, is it
11 Seward?

12 MR. SELLARD: That's close.

13 HEARING OFFICER CELLI: Semard?

14 MR. SELLARD: Sellard.

15 HEARING OFFICER CELLI: S - e --

16 MR. SELLARD: -l-l-a-r-d.

17 HEARING OFFICER CELLI: -- l-l-a-r-d.
18 Sorry for the mispronunciation.

19 MR. SELLARD: That's okay. A lot of
20 people do. Thank you very much for allowing us to
21 speak as a community. You guys have driven a long
22 ways and it's been a long day. I was here for
23 most of the meeting this morning.

24 My name is Michael Sellard. I'm a
25 resident of California City for the last five

1 years now. And I've enjoyed the desert and the
2 view. And I'm familiar with this ranch that this
3 proposed project is being proposed to be built at.

4 I followed this progress, very slow
5 progress, and labor intensive to get all this
6 done. I think these guys have done an admirable
7 job. And I've listened to the water people speak
8 and so forth. And I think for two different, not
9 exactly opposing views, I think they've worked
10 together cooperatively. And I'm delighted to say
11 that.

12 But if I don't speak my mind tonight,
13 I'm not going to sleep very good. And so here it
14 is. So be patient with me today, I was patient
15 with you guys this morning, listening to all this
16 chatter going on.

17 I wanted to write down a couple things
18 and share. What I heard today was rather
19 disturbing to me, it really was. It almost made
20 me cry in a way, as a Californian, as a resident
21 of this community.

22 CURE seemed to be groping about in the
23 darkness trying to come up with questions and
24 gasping for air almost of anything to do, it
25 seemed like they were wasting people's time. That

1 was my feeling I got. Again, these are my personal
2 feelings.

3 I was wondering why they were putting so
4 much effort into being negative energy towards
5 this project. And so I kind of did a little
6 research, And I don't believe a lot of what I see
7 on the internet, but it gave me some balance.

8 I saw what their website stated as, you
9 know, their message to the world. It sounded
10 really good. Sounds really neat, you know.
11 Together the environmental and labor organizations
12 can improve California's economy. That sounds
13 good.

14 And the environment, well, that's really
15 good. Making sure that conventional renewable
16 power plants would be the best practices to
17 protect our clean air, that's good, land, water,
18 et cetera. Minimize the environmental impact to
19 new plants, well, okay.

20 To me it was just kind of, it didn't
21 seem to ring true with what I heard today and that
22 bothered me. A lot of things bother me about
23 politics. But, anyhow.

24 It just seems like it's -- I got the
25 feeling it's manipulation and greed involved here,

1 as the root or the genesis of who they are. And
2 that bothers me very very much.

3 I look at Beacon, you know, and Florida
4 Power and Light. And I don't have any contracts
5 with them, they don't know who I am hardly, you
6 know, just a resident here. And I see that they
7 try and work with people. They try and
8 communicate. And I saw some good things happen.
9 I didn't go to Sacramento because I couldn't go up
10 there.

11 But it seems like an intervenor, I don't
12 know why they're an intervenor, this group here.
13 It doesn't seem right to me. I know it's
14 American, it's freedom and all that stuff, and
15 that's good, because things are wasting away, it
16 seems like.

17 You know, if a project labor agreement
18 was signed here, they would be shouting from the
19 rooftops, how wonderful FPL is, how wonderful
20 Nextera Energy is, and how they're good for the
21 environment. They'd be just tickled pink.

22 I know that they're involved in a lot of
23 places and a lot of energy projects here in
24 California. And there was a guy named Richard
25 Henry Lee, and he made a statement. This was in

1 The Sacramento Bee, it was just kind of
2 interesting.

3 This is a quote, this is in February
4 2008. "For several years a group called
5 California Unions for Reliable Energy has used
6 CEQA to slow down or block power plants, including
7 a geothermal plant in Imperial County."

8 "CURE is supported by various
9 construction unions. It has a history of fighting
10 new projects in California unless the applicant
11 agrees to use union labor on the project."

12 Okay, what's new? "Labor unions are an
13 even larger abuser of CEQA," he stated. "In
14 recent years labor groups have used environmental
15 lawsuits or the threat of such lawsuits to stop or
16 slow down power plant construction, hospital
17 expansions and housing developments."

18 "The union lawyers always seem to
19 disappear once a developer has signed a agreement
20 to hire only union labor."

21 "When BrightSourceEnergy went for their
22 permit and they pledged to hire union contractors
23 they quickly moved into their project in the
24 desert. And very quickly they were underway,
25 because CURE made no objection whatsoever to the

1 project."

2 This is a community of hard workers here
3 in Cantil and California City. There's a lot of
4 unemployment here. And it concerns me that -- I
5 used to be a union worker at one time, a long time
6 ago before I changed professions, so I have a
7 little bit of understanding. And I'm pro-union,
8 in a way, and I'm not in other ways. They were a
9 good thing at one time. I won't get into my
10 political viewpoint on that.

11 But I think they've really overstepped
12 their bounds here. The construction that's going
13 to happen there, which is, two and a half years I
14 think was stated by this gentleman here, and about
15 1,000 workers. Except for the power block
16 section, which takes highly skilled plumbers and
17 fitters, welders, electricians, it's really a
18 nonskilled job, or semi-skilled, at best.

19 And this community can really benefit
20 from this power plant. It's needed in this
21 community. It's coming, unfortunately a little --
22 it would have been nice if it had been a year ago,
23 but that's the way things happen. We all know it
24 would take time. I think most of the residents
25 didn't think it would take this much time.

1 But, anyhow, this community of hard
2 workers can build that portion of the plant which
3 takes assembly. And we can also build the water
4 line, the recycled water from Rosamond and
5 California City to the Beacon site in Cantil.

6 If CURE gets its way, through
7 manipulation, in my personal opinion coercion, all
8 the workforce will be out of town. There will be
9 no jobs that will come to this community. Because
10 none of the workers here, with possibly
11 exceptions, belong to any of the CURE union shops.

12 Most of those are in Los Angeles, I believe, and
13 also up and down California, but in Bakersfield.

14 FPL will even have to pay per diem for each
15 one of those workers, too.

16 I'm almost done, sir. Now, sir, thank
17 you for not allowing CURE to enter in those three
18 inches of papers into the record. I commend you
19 for that. Thank you.

20 I've worked with many many attorneys in
21 my business career, and I've always seen the trick
22 of, in this case it was Thursday night, but
23 usually it's Friday night at 4:59 an email comes
24 in or a fax with a whole bunch of burdens now
25 placed on the other camp. And I think it was very

1 unfair, because sometimes that brings confusion.

2 Not in this case, you have a very
3 experienced developer here. They know what
4 they're doing.

5 CURE is doing the same thing in other
6 large energy projects like the ones in Roseville,
7 Victorville, Romoland and in Sutter.

8 It works like this. If you agree early
9 on with them, then your project will be built
10 quicker and cheaper. And now all of a sudden
11 they're your best buddies.

12 We are supportive, I speak of the
13 community -- actually I speak for myself, and some
14 people may not agree with me, but I think as a
15 community we're supportive of this project. It's
16 needed. It's in the Governor's mandate. It's in
17 the best interests of human beings. It saves on
18 carbon footprint. It's a good thing.

19 They're responsible. They've already
20 got a whole bunch of plants around. I've seen
21 some of those plants. I've actually been over at
22 one a long time ago. And they're very
23 professionally run and these guys are doing the
24 right thing.

25 Now, FPL and Nextera Energy, from my

1 viewpoint, is a proven major environmental
2 friendly energy producer and will treat the land
3 of Cantil with respect and very well. They will
4 do that. And I believe without anybody even
5 overseeing them, I think they would do that.

6 They'll actually improve the land and
7 the local environment from the existing abandoned
8 condition it's in today. You don't hear anybody
9 objecting to this plant, and people around here
10 speak their mind.

11 The Beacon project will bring good-
12 paying jobs to this community, but we need the
13 jobs. The Beacon plant will not come here to
14 simply take profits from the land and leave. They
15 are here to stay. They are one of the major
16 energy producers in the United States. And
17 they'll continue to be that way because of their
18 integrity and the way they do things. I've
19 watched them closely.

20 They are committed to energy companies
21 that was a good reputation and is committed to the
22 community and to solar project, as I said earlier.

23 They are a proven producer and they will be
24 responsible, again, towards the land.

25 They have proven themselves over and

1 over again. And their willingness to communicate
2 with other people that do not agree with them
3 possibly.

4 I am not for CURE for the following
5 reasons: They work on, in my opinion they work on
6 principles based on deception and are
7 manipulative. I saw it over here clearly today.

8 In this case they will not probably
9 provide any local jobs to the community. CURE
10 will control its job effort from cradle to grave
11 on this project. And there will be no local jobs
12 after this plant is built, unless, of course,
13 someone again belongs to that union,

14 I encourage the CEC and yourself, sir,
15 to continue to work with Nextera Energy and to get
16 this permit in place. We need it as a people
17 group. As human beings, we need this. And change
18 is not easy, and these guys are making change. We
19 need to make this happen.

20 I would encourage Nextera Energy not to
21 bow down or cower to CURE, as it will hurt this
22 community and this project. I encourage Nextera
23 Energy not to bow down or cower to CURE, as it
24 will hurt California in future projects. Now,
25 again, this is my personal opinion, nobody has to

1 agree with me, okay. I got this freedom to speak
2 and it's wonderful until it's taken away. Which
3 we're seeing daily, this is taken away, and it's
4 sad.

5 I would appreciate it if CEC would not
6 allow CURE to be an intervenor any more, because I
7 don't think that the foundation and the root in
8 their motivation is correct. That's my opinion.

9 HEARING OFFICER CELLI: Well, thank you
10 very much.

11 MR. SELLARD: I've got one more little
12 tiny thing.

13 HEARING OFFICER CELLI: Oh, I'm sorry.

14 MR. SELLARD: Thank you. What CURE does
15 is near blackmail in my opinion. What the people
16 in the industry call it is greenmail. It's
17 blackmail in disguise. And I think it's very
18 wrong.

19 Once again, let's all stand up and be
20 counted for doing things in the correct way, with
21 righteousness, making good decisions for our
22 environment and for our community.

23 Thank you very much.

24 HEARING OFFICER CELLI: Thank you very
25 much. I just am going to say that our licensing

1 process pretty much is designed to see whether
2 this proposed power plant is in compliance with
3 all the laws of the State of California, all of
4 the federal laws, all of the local laws. We make
5 sure that it complies with the California
6 Environmental Quality Act.

7 And if it jumps through all of these
8 legal hurdles, --

9 MR. SELLARD: Yes.

10 HEARING OFFICER CELLI: -- then they get
11 their license.

12 MR. SELLARD: That's good.

13 HEARING OFFICER CELLI: Who they hire is
14 their business decision. The California Energy
15 Commission does not involve itself in the running
16 of the business.

17 MR. SELLARD: I understand that.

18 HEARING OFFICER CELLI: We don't tell
19 them how to do that.

20 MR. SELLARD: I understand that. I
21 appreciate you guys being here very very much.
22 You guys have put in a long day. I thank you for
23 allowing me to speak my mind, so I'll be able to
24 sleep good tonight.

25 Thank you.

1 (Laughter.)

2 HEARING OFFICER CELLI: Thank you very
3 much. And we have more to go. So, it's now -- I
4 have no other blue cards for public comment. So
5 if there's anyone else who's here, a member of the
6 public who wants to make a public comment, please
7 do.

8 Then I'm looking on the website and we
9 have nobody on the phone, so. You know, folks,
10 the reason we come to these towns is so that you
11 shouldn't have to call in. We're here so that you
12 can come in in person and make a public comment.

13 And so we are very grateful for
14 everyone's public comment. We will consider the
15 public comment section closed for the evening,
16 then. It's now 7:15 and we've heard from
17 everyone, isn't that correct, Jim Davis?

18 MR. DAVIS: Yes.

19 HEARING OFFICER CELLI: That's correct.
20 So I'm going to take a quick break, and can we
21 start at 7:15. And we will start up with
22 hazardous materials -- I mean, well, I've got
23 7:13.

24 (Laughter.)

25 HEARING OFFICER CELLI: We can take a

1 quick break.

2 (Laughter.)

3 HEARING OFFICER CELLI: So we'll start,
4 say, 7:18, how's that. We're going to take five
5 minutes and we will resume.

6 (Brief recess.)

7 HEARING OFFICER CELLI: It's 7:23 and
8 counting. I want to take a little inventory of
9 where we are, because by my calculations I've not
10 taken in evidence on alternatives. We did take in
11 all of your evidence on bio. We have taken in all
12 the evidence on cultural. We're about to deal
13 with soil and water, we took all of the evidence
14 on soil and water.

15 We're about to deal with hazardous
16 materials and waste management now. We have not
17 taken in project description because,
18 Ms. Gulesserian, you wanted to raise something
19 about that, but I got the sense from talking to
20 you that you weren't going to, you changed your
21 mind, and maybe we can just take in project
22 description? You can clear me up on that one.

23 MS. GULESSERIAN: Right, we don't have
24 any questions on project description anymore.

25 HEARING OFFICER CELLI: Okay, and then

1 transmission system engineering is finished and
2 visual is finished.

3 So what I think we should do right now
4 is take in alternatives and project description.
5 And if I'm right about this, then the only thing
6 outstanding will be hazardous materials and waste.
7 Right?

8 MS. LUCKHARDT: Correct.

9 HEARING OFFICER CELLI: Okay.

10 MS. LUCKHARDT: Project description,
11 alternatives, hazardous materials and waste.
12 That's my list.

13 HEARING OFFICER CELLI: Okay. And
14 hazardous materials, or alternatives, we received
15 everybody's evidence except applicant's, I
16 believe. I don't think I took that in. Or did I?

17 MS. LUCKHARDT: No, you have not
18 received our testimony on alternatives. Would you
19 like me to move that at this time?

20 HEARING OFFICER CELLI: Please. A
21 motion as to alternatives by the applicant.

22 MS. LUCKHARDT: Okay. Applicant moves
23 exhibit 4 in the area of alternatives. Exhibit 4,
24 AFC section 4; exhibit 43, AFC appendix K-1;
25 exhibit 89, an email from Kenny Stein to Eric

1 Solorio dated 11/24/08.

2 Exhibit 100, the dry cooling evaluation;
3 exhibit 121, the preliminary PSA comments; exhibit
4 127, the PSA comments on alternatives; exhibit
5 153, the comments on the CEC groundwater sampling
6 program.

7 Exhibit 166, the project design
8 refinements section 3.1; exhibit 167, the project
9 design refinements section 3.1.1; exhibit 168, the
10 project design refinements section 3.1.2; exhibit
11 169, the project design refinements section 3.2;
12 exhibit 184, the project design refinements
13 section 4.3.1.

14 Exhibit 185, the project design
15 refinements section 4.3.5; exhibit 186, the
16 project design refinements section 4.3.6; exhibit
17 number 187, the project design refinements section
18 4.3.7; exhibit 189, the project design refinements
19 figure 2; exhibit 193, the project design
20 refinements figure 7.

21 Exhibit 221 is an email to the Energy
22 Commission regarding the results of offsite well
23 sampling, dated 8/11/09; exhibit 222 is an email
24 to the Energy Commission with resubmittal of
25 revised metals results from offsite sampling dated

1 8/18/09.

2 Exhibit 224 is the RCR well data;
3 exhibit 229 is the CEC well canvas; exhibit 230 is
4 the CEC well canvas photos; exhibit 245 is the
5 declaration of Dan Sampson on alternatives;
6 exhibit 258 is the declaration of Gary Pratt on
7 alternatives.

8 Exhibit 265 is the declaration of Janine
9 Forrest on alternatives; exhibit 271 is the
10 declaration of Jared Foster on alternatives;
11 exhibit 287 is the declaration of Kenneth Stein on
12 alternatives.

13 Exhibit 297 is the first declaration for
14 Mike Flack on alternatives; exhibit 298 is the
15 second declaration from Mike Flack on
16 alternatives; exhibit 308 is the declaration of
17 Sara Head on alternatives; exhibit 314 the
18 declaration of Scott Busa on alternatives.
19 There's a second one as well -- Scott Busa. And
20 then exhibit 317 is the declaration of Scott Stern
21 on alternatives.

22 HEARING OFFICER CELLI: Thank you.
23 CURE, any objection to the receipt of any of that
24 evidence?

25 MS. GULESSERIAN: No objections.

1 HEARING OFFICER CELLI: Staff, any
2 objections?

3 MR. BABULA: No objections.

4 HEARING OFFICER CELLI: Thank you.
5 Exhibits marked for identification as exhibits 4,
6 43, 89, 100, 121, 127, 153, 166, 167, 168, 169,
7 184, 185, 186, 187, 189, 193, 221, 222, 224, 229,
8 230, 245, 258, 265, 271, 287, 297, 298, 308, 314
9 and 317 are now received into evidence.

10 And lastly we have project description.

11 MS. LUCKHARDT: Okay, at this point the
12 applicant moves our exhibits on project
13 description, beginning with exhibit 2, AFC section
14 2, exhibit 3, AFC section 3; exhibit 5, AFC
15 section 5.1; exhibit 23, AFC appendix A; exhibit
16 45, AFC appendix K-3; exhibit 103 -- no, we're not
17 moving exhibit 103, I apologize for that.

18 Exhibit 126, the PSA comments; exhibit
19 246, the declaration of Duane McCloud on project
20 description; exhibit 280 is the declaration of
21 Kenneth Stein on project description. And exhibit
22 310, which is the declaration of Scott Busa on
23 project description.

24 HEARING OFFICER CELLI: Any objection,
25 CURE?

1 MS. GULESSERIAN: No objections.

2 HEARING OFFICER CELLI: Staff?

3 MR. BABULA: No objections.

4 HEARING OFFICER CELLI: Thank you. And
5 exhibits marked as 2, 3, 5, 23, 45, 126, 246, 280
6 and 310 are received into evidence. Number 103
7 was withdrawn.

8 MS. LUCKHARDT: Correct.

9 HEARING OFFICER CELLI: With that we are
10 moving into the area of -- I guess we'll do
11 hazardous materials first, or waste?

12 MR. BABULA: I kind of had it as a panel
13 because most of the comments dealt with HTF fluid
14 and that kind of crossed both disciplines. Either
15 it was leaking or was already in the ground and
16 what are you doing with it.

17 And, again, we agreed to resolution with
18 the applicant so this would be CURE's burden.

19 HEARING OFFICER CELLI: That's correct.
20 So you have another witness, I see,
21 Ms. Gulesserian.

22 MS. GULESSERIAN: Yes, we do.

23 HEARING OFFICER CELLI: So I would ask
24 that he please rise and be sworn.
25 Whereupon,

1 MATTHEW HAGEMANN

2 was called as a witness herein, and after first
3 having been duly sworn, was examined and testified
4 as follows:

5 HEARING OFFICER CELLI: Please state and
6 spell your name.

7 MR. HAGEMANN: Matthew Hagemann,
8 H-a-g-e-m-a-n-n.

9 DIRECT EXAMINATION

10 BY MS. GULESSERIAN:

11 Q Whose testimony are you sponsoring
12 today?

13 A My testimony.

14 Q Do you have any changes to your sworn
15 testimony?

16 A No.

17 Q Are the opinions in your testimony based
18 on your professional experience?

19 A Yes.

20 MS. GULESSERIAN: I was going to
21 summarize qualifications and experience, or we can
22 stipulate to his expertise to testify on this
23 matter.

24 HEARING OFFICER CELLI: We've received
25 his --

1 MS. GULESSERIAN: Résumé as --

2 HEARING OFFICER CELLI: -- résumé. Is
3 there any objection to this witness testifying as
4 an expert by applicant?

5 MS. LUCKHARDT: No objection.

6 HEARING OFFICER CELLI: Staff?

7 MR. BABULA: No objection.

8 HEARING OFFICER CELLI: Thank you. So
9 stipulated. You don't need to give us any
10 information about all the articles you've written,
11 all of the colleges you went to, all that. We
12 deem you an expert.

13 BY MS. GULESSERIAN:

14 Q Okay. Can you please summarize your
15 principal findings from your investigation.

16 A Yes. I found that potential spills of
17 heat transfer fluid, thermanol VP1, which I'll
18 just refer to as HTF, would be larger than
19 estimated and it would result in significant
20 unmitigated impacts to people, wildlife and the
21 environment.

22 And would result in potential and likely
23 exposure to toxic levels of contamination that
24 would be harmful to health and to wildlife.
25 Groundwater may also be significantly impacted.

1 I found that potential spills may be
2 much more dangerous than analyzed by CEC Staff,
3 resulting in significant unmitigated impacts
4 because spills at similar facilities operated by
5 the applicant in this proceeding have not been
6 reported in a timely fashion, putting workers,
7 motorists and local residents at potential risk.

8 For example, I believe it was March
9 2005, a 9,900-gallon spill resulted in a vapor
10 cloud that traveled 3500 feet south to be visible
11 on highway 58 and resulted in the closure of that
12 highway by the California Highway Patrol. This is
13 in my rebuttal testimony dated March 8th. And I
14 made the measurement, myself, off of Google maps.

15 Also worst case, potential spills could
16 result in approximately 500 truck trips for one
17 spill alone, on the order of 30,000 gallons, as
18 seen at the SEGS facility in Kramer Junction.

19 That would have to be transported from
20 the area to hazardous waste landfills resulting in
21 impact on traffic and potential exposure to people
22 and the environment at the place of disposal,
23 which would likely be Kettleman Hills.

24 Spills will generate non-RCRA hazardous
25 waste, both free-standing or free-product HTF,

1 which is HTF in a waxy state at ambient
2 temperatures. And that will present some
3 interesting exposure possibilities to workers, to
4 responders to spills.

5 The HTF contaminated soils will be
6 placed in a land treatment unit on the site
7 without any provisions currently for testing. We
8 know that at the SEGS facilities, without testing
9 the material has been placed in the land treatment
10 unit and has later been found to be in excess of
11 10,000 mg/kgm, the criterion by which DTSC
12 established it to be a hazardous waste in 1995 for
13 the SEGS facilities.

14 So we believe that a similar process
15 here where no testing is currently provided in the
16 AFC or the FSA or any conditions of certification,
17 would result in placement of this waste in the
18 land treatment unit on a low permeability surface,
19 not a nonpermeable surface, which would also
20 include a liner to comply with California and
21 possibly federal hazardous waste regulations.

22 Spills will generate free-standing
23 liquid hazardous waste, and no provisions are
24 currently made in any of the documentation I've
25 reviewed to handle these liquids at the Beacon

1 Plant.

2 Q Okay, in layperson terms what does this
3 mean?

4 A Well, I've had to put a story together
5 on the basis of what I've seen at the Kramer
6 Junction facility. And what I've been able to
7 gather there is that the workers who respond to
8 spills address the spills on a visual basis.

9 That they go in and they can obviously
10 see the free-standing HTF is piled up on the
11 ground surface. So that is vacuumed up into a
12 vacuum truck and taken to a recycling facility at
13 the SEGS III through VIII, or III through VII,
14 excuse me, at Kramer Junction. So that's one
15 issue, just dealing with the piled up HTF on the
16 ground surface.

17 Then I think the workers visually assess
18 where the spill has extended within the array of
19 the parabolic troughs. And then that soil is
20 excavated and moved to a land treatment unit where
21 it has limited capacity. And some of the material
22 must be excavated and moved offsite without
23 testing.

24 And then a week later or maybe ten days
25 later on the basis, again, this is all in the

1 testimony I provided in November of 2009 as an
2 attachment. You can look through the reports that
3 I obtained from the Regional Water Quality Control
4 Board. These were not in the possession of the
5 California Energy Commission compliance division.

6 But what I found there is that the site
7 is later sampled, is grid sampled, and so then
8 they excavate further to remove material that
9 would be above 10,000 mg/kgm criterion for
10 disposal. So that's one aspect of what it would
11 mean in lay terms.

12 The other thing I found is that the
13 response at the SEGS facility has not been in
14 compliance with CERCLA requirements for
15 notification, emergency notification. And that, I
16 think, is a significant issue because it would
17 hinder a proper emergency response.

18 It could expose the community, the
19 motorists and response personnel to significant
20 public health risks, and could further expose the
21 environment to contamination and hazardous
22 materials as a result.

23 Q Have you reviewed the FSA hazardous
24 materials conditions of certification?

25 A Yes.

1 Q And based on the conclusions you
2 articulated is that your understanding that these
3 conditions address your findings?

4 A No.

5 Q Why not?

6 A Well, the hazardous materials section of
7 the hazardous materials conditions of
8 certification require several things. That they
9 would only use the hazardous materials that would
10 be listed in the AFC; that there would be a
11 hazardous materials business plan that would need
12 to be prepared that would comply with county
13 requirements; to develop a safety management plan;
14 to provide site security for construction and
15 operation. And to provide for hydrogen gas
16 storage cylinders and provide for isolation valves
17 and pipe loops to isolate HTF leaks.

18 Q So why don't those address your findings
19 that you've made?

20 A Well, principally because, again, no
21 provisions for addressing pure phase or liquid or
22 free-standing HTF. And no provisions for testing
23 the material at the point of the spills origin to
24 insure that it's properly handled.

25 That is before you move it to the land

1 treatment unit you need to know if it is above
2 10,000 mg/kgm. You cannot take that and put it
3 into a land treatment unit that has no liner and
4 is low permeable. It needs to be impermeable.

5 And then you also need to know how to
6 handle the massive volumes of the material so that
7 it can be sent to the proper disposal facility.

8 So, none of that was in the AFC or the
9 conditions of certification.

10 Q Have you reviewed the FSA's waste
11 management conditions of certification?

12 A I have.

13 Q Okay. We probably don't need to go over
14 them again, but we can. If asked questions can
15 you explain whether those conditions address the
16 findings that you've made?

17 A No, again free-standing HTF is not
18 addressed. Placement in the land treatment unit
19 without testing is not addressed. Transport of
20 free phase material offsite and disposal is not
21 addressed. Or the provision for recycling in a
22 treatment facility onsite is not addressed,
23 either.

24 I will note that at the SEGS III through
25 VII facilities where there have been 10,000-gallon

1 spills, 30,000-gallon spills, again the 10,000
2 gallon spills in 2005, 30,000-gallon spills in
3 2007, that material was sent to a recycling
4 facility onsite.

5 I'm not sure that recycling facility's
6 in compliance with state, federal, county law, to
7 be honest with you. I don't know if it is,
8 because it could be a waste that's then taken and
9 then treated onsite without proper permits.

10 So I don't know in the FSA for the
11 Beacon plant what they plan to do with the free-
12 standing HTF. That is, do they plan to construct
13 a similar recycling and treatment facility at
14 Beacon. Or do they plan to send it offsite.

15 So those are my principal concerns.

16 Q Okay. Did you examine the rebuttal
17 testimony of staff?

18 A Yes, I did.

19 Q Okay. Do you know what I'm talking
20 about, staff's testimony?

21 A Yes.

22 Q All right, by Geoffrey Lesh, on the need
23 to more tightly specify isolation valve
24 requirements in response to Mr. Celli's question
25 at the prehearing conference, or it was an earlier

1 conference. And it was attached --

2 HEARING OFFICER CELLI: It was a status
3 conference.

4 MS. GULESSERIAN: Thank you.

5 BY MS. GULESSERIAN:

6 Q -- as exhibit 504. Do you have any
7 points regarding staff's supplemental statement?

8 A The issue of how effective isolation
9 valves will be in preventing future leaks -- and
10 leaks are acknowledged by staff and by the
11 applicant, that they will occur -- I don't know.
12 I have no basis to understand how effective those
13 isolation valves will be in preventing leaks.

14 And, in fact, the applicant's rebuttal
15 testimony would indicate that isolation valves are
16 a source of leaks. Although I do see in the
17 record that there are a number of other potential
18 sources of leaks including -- let me just cite, if
19 I could -- because this is not in the record.
20 It's research I did prior to the testimony here
21 today. And that was --

22 MS. LUCKHARDT: Now, it's not in the
23 record? So is it in your rebuttal? Is it in an
24 attachment?

25 MS. GULESSERIAN: Thank you for

1 clarifying.

2 HEARING OFFICER CELLI: Excuse me a
3 moment. Is there an objection?

4 MS. LUCKHARDT: Yeah, I'm objecting if
5 it's new.

6 HEARING OFFICER CELLI: Okay. And is
7 this a basis of an opinion?

8 THE WITNESS: No.

9 HEARING OFFICER CELLI: Okay.

10 THE WITNESS: It's not opinion, it's
11 fact gleaned from an attachment to my November 12
12 testimony.

13 MS. GULESSERIAN: It is in the record
14 already. It's an attachment to your testimony.
15 It is a summary of attachment from your opening
16 testimony.

17 THE WITNESS: Yes. I think it's
18 attachment 2, which is a long --

19 HEARING OFFICER CELLI: That would be
20 615, Spill Report SEGS III through VII. Is that
21 what we're talking about, 1987 through 2008?

22 MS. GULESSERIAN: That's correct,
23 exhibit 615.

24 BY MS. GULESSERIAN:

25 Q A summary of your findings regarding

1 your review of exhibit 615.

2 HEARING OFFICER CELLI: While he's
3 looking, let's -- how much more do we have on
4 direct?

5 MS. GULESSERIAN: We're almost done.

6 THE WITNESS: It's attachment 2 to my
7 November 12 testimony.

8 So, in that attachment I documented
9 these releases for just two years worth of time
10 from the sources.

11 In February 27, 2007, a 1,000-gallon
12 spill from a heat collection unit. March 27,
13 2007, a 35-gallon spill from twisting of oil pipe
14 assembly. January 9, 2006, a 75-gallon spill from
15 a packing port on a double ball joint assembly.
16 February 16, 2007, a 30,000-gallon spill from a
17 valve stem in 18-inch HTF pump bypass valve.
18 2/15/06, a 400-gallon spill from a heat collector
19 element piping torque tube. And December 30,
20 2006, a 50-gallon spill because a valve was left
21 open by a worker.

22 So I don't see in there isolation valves
23 assisting greatly in reducing the frequency and
24 number of leaks.

25 BY MS. GULESSERIAN:

1 Q Thank you. Did you have an opportunity
2 to review Duane McCloud's rebuttal to your
3 testimony?

4 A Yes.

5 Q And can you summarize briefly any points
6 you have regarding the applicant's rebuttal
7 testimony?

8 A Yes, Mr. McCloud does not address the
9 worst case potential significant impacts from HTF
10 spills. He does not testify to show that valves
11 are the only source of potential HTF spills. And
12 Mr. McCloud's testimony shows that the project
13 involves responding to and handling liquid HTF
14 before it contaminates the soil, that the spills
15 may be so dangerous to safe access to stop the
16 leaks is impossible. And that mitigation is
17 required, but has not yet been identified.

18 Q Did you review the applicant's witness,
19 Michael Flack's rebuttal to your testimony?

20 A Yes.

21 Q Summarize briefly any points you have
22 regarding that aspect of the applicant's rebuttal
23 testimony.

24 A Mr. Flack's testimony shows that neither
25 the project nor staff addressed HTF spills at the

1 point of their origin. And Mr. Flack's testimony
2 is inconsistent with the AFC and the FSA when it
3 states that soils will be staged on impermeable
4 materials.

5 Q Okay. What is your understanding of
6 these issues?

7 A The project only proposes to test HTF
8 contaminated soil after it's moved to the land
9 treatment unit. And that LTU, the land treatment
10 unit, will incorporate a liner -- excuse me, it
11 will not incorporate a liner or leach collection
12 and removal system, but will be constructed with a
13 prepared base consisting of two feet of compacted,
14 low permeability, lime-treated material.

15 Q Does a low permeability surface
16 constitute an impermeable surface for temporary
17 accumulation of hazardous waste?

18 A No.

19 MS. GULESSERIAN: No further questions
20 for this witness.

21 HEARING OFFICER CELLI: Staff, cross?

22 CROSS-EXAMINATION

23 BY MR. BABULA:

24 Q The basis of most of your testimony
25 seems to be what happened at the SEGS facilities,

1 is that the case?

2 A My testimony here tonight?

3 Q Right.

4 A Well, I would say I used the experience
5 there to -- an analogous facility that is half the
6 size of the Beacon Plant. Well, I should say at
7 the SEGS facility it's 600,000 gallons of HTF or
8 maybe 700,000 gallons.

9 Beacon proposes to use 1,2 million
10 gallons, or I've also seen in the FSA is 2.4
11 million gallons.

12 So, yes, I use the experience there of a
13 facility which is sized at half or a third the
14 size of the Beacon facility.

15 Q And do you know when approximately those
16 facilities were built?

17 A I do know that SEGS started, I think,
18 construction in '86 or operation in '86.

19 Q So, is there -- well, let me put it this
20 way. This project would have to be constructed in
21 2011. Is it true that it's comparable, can you
22 compare with this project being built now and the
23 information known and the technology known today,
24 to a facility built 20 years ago or so?

25 A To the best of my ability, the piping

1 detail is not included, as Mr. McCloud had
2 testified in his rebuttal testimony. So we don't
3 have the ability to look at design diagrams for
4 the piping system.

5 What I do note is that the Kramer
6 Junction facilities have been retrofitted. For
7 instance, flex tubing, which was used to connect
8 the loops to the troughs, were replaced with what
9 were considered to be more reliable ball joint
10 assemblages.

11 So, and I believe those are the same
12 assemblages that are proposed for use at the
13 Beacon facility.

14 MR. BABULA: Okay. So that would be --
15 would you characterize that as a sort of an
16 evolution process of trying to improve the
17 facility?

18 A I did read at the SEGS facilities that
19 they thought that the flex tubing was particularly
20 prone to leakage.

21 Q Okay.

22 A And the flex tubing is not to be used at
23 Beacon. And by the way, again, if they switch
24 that material or that piping material out, so I
25 don't think that Beacon is fundamentally different

1 than SEGS in that way.

2 Q Okay. You had indicated that you felt
3 that the conditions of certification staff had put
4 forth in the waste section didn't require testing,
5 I think, was one of your statements, of the soil.

6 And so I want to just point out waste-7
7 of the final staff assessment there seems to be in
8 the verification it says, the project shall sample
9 HTF-contaminated soil in accordance with USEPA
10 version of test methods for evaluating solid
11 waste. Samples shall be analyzed in accordance
12 with USEPA method 8015 or other methods reviewed
13 and improved by DTSC and CPM.

14 So there seems to be a testing mechanism
15 in the condition and the verification. And in the
16 condition, itself, it says the -- submit to the
17 CPM and DTSC for approval. The applicant's
18 assessment of whether the HTF containment soil is
19 considered hazardous or nonhazardous.

20 And then it lists -- there's a litany of
21 different things they need to look for -- look
22 through.

23 So, waste-7, that's still not sufficient
24 in your mind to address a potential spill or
25 contaminated soil?

1 A I did not testify that no sampling would
2 be required as a condition of certification. I
3 said that no sampling would be required for the
4 soil at the point of origin of the spill.

5 I think that's a very important point to
6 make because based on the experience at Kramer
7 Junction they've taken soil at the point of spill,
8 placed it in a land treatment unit, tested it at
9 some time later and found it to be above 10,000
10 mg/kgm.

11 And at that point I read nothing in the
12 record that I obtained from San Bernardino County
13 or the Regional Board to show that they then
14 transported material offsite for disposal as it
15 should be, because it was over the DTSC criterion.

16 So, that, I think, is a very important
17 point. But I don't see the specificity in the
18 condition of certification there to require the
19 sampling before placement in an LTU which would
20 not comply with hazardous waste regulations.

21 Q Okay. So, if DTSC and the CPM determine
22 the HTF-contaminated soil is considered hazardous,
23 it's subject -- to be disposed of in accordance
24 with California's Health Code section 25203.

25 So, again, the issue you have is that at

1 the site of the spill that no --

2 A Right.

3 Q -- this is again the verification of the
4 waste-7.

5 A Yeah, I mean we think of this as another
6 site, not a solar plant, which is -- a site that
7 regulators just aren't used to regulate. If we
8 think of this as a refinery where there is above-
9 ground piping. By the way, that's going to be
10 double-walled and it's going to be piping which is
11 very tightly monitored.

12 If you have a spill of gasoline at a
13 refinery you don't go in and just scoop up the
14 gasoline-contaminated soil and then take it to a
15 land treatment unit, which refineries have. They
16 have land treatment units for treatment of the
17 material. But you cannot pick that up and then go
18 take it somewhere else while testing is pending.

19 So in this case I think what has
20 happened is that the regulators have allowed these
21 spills to occur without sampling at the point of
22 origin. And instead, what you would do if they
23 were regulated as in other facilities, is you
24 would go out to that spill site. You would set up
25 a sampling regimen to insure you put an outline

1 around the spill.

2 You would stage the soils properly.
3 That is you would put them properly right into
4 trucks, or you would put it into some roll-off
5 bins. You would composite sample the material at
6 that point to characterize them for disposal at an
7 appropriate facility.

8 So I just don't see that kind of
9 specificity in any of the documents I reviewed.

10 MR. BABULA: Okay, I have no further
11 questions.

12 HEARING OFFICER CELLI: Thank you. The
13 applicant. Ms. Luckhardt, cross?

14 MS. LUCKHARDT: I just have a few.

15 CROSS-EXAMINATION

16 BY MS. LUCKHARDT:

17 Q You said just a moment ago, and I may
18 not have this as an exact quote because I was
19 taking notes, site regulators are not used to
20 regulating. Are you implying in that statement
21 that Beacon would be a site that regulators are
22 not used to regulating?

23 A Well, I'll just look at, you know,
24 comparisons for example. The State of California
25 has 13 refineries. A long history of regulation.

1 They are used to regulating refineries. The
2 State Water Board has familiarity with that type
3 of a facility.

4 In this case, given we have, what, SEGS
5 I and II, we have SEGS III through VII, and we
6 have SEGS VIII and IX. And we have a few other
7 facilities in the state, I would say yes, that
8 regulators are not used to dealing with these
9 kinds of facilities and with the material that is
10 used, particularly at sites where they use heat
11 transfer fluid.

12 Q Are you aware that some of the SEGS
13 facilities are regulated and licensed by the
14 California Energy Commission?

15 A Yes.

16 Q And so you're still saying that the
17 Beacon site is a site regulators are not
18 accustomed to regulating?

19 A Well, when I say that I probably am
20 thinking more the traditional regulatory bodies
21 which would be the Regional Water Quality Control
22 Board.

23 And I say that because the reports are
24 submitted concurrently to both the Energy
25 Commission and the Regional Board. Of course,

1 understanding that the Commission has the
2 authority here, granted under the one-stop shop
3 provision.

4 So, I'm speaking from the standpoint of
5 the traditional hazardous waste agencies like
6 DTSC, the Regional Board and the federal USEPA.

7 Q Even though they have had experience
8 with the spills that have happened at the SEGS
9 facilities?

10 A Yes, and also let me mention the county.
11 The county has authority that's been delegated to
12 them. And, yes, they have the experience in
13 responding to the spills.

14 In the case of the county, the county
15 did issue a notice of violation for the 2005
16 spill; for failure to notify.

17 So there is some familiarity, but again
18 it's not as if, you know, you've got 30,000 gas
19 stations throughout the state, or 13 refineries,
20 or five permitted hazardous waste landfills.

21 It's a very, an unusual kind of
22 facility. And when you talk to regulators and you
23 ask them about their knowledge of HTF, they don't
24 know what it is. They don't even know how to
25 sample. They don't even know if method 8015,

1 which is the USEPA method that you cite in the
2 FSA, is an appropriate method to test for the
3 constituents of HTF, biphenyl and diphenyl oxide
4 or biphenyl ether, diphenyl ether.

5 So I'm saying yes, it is unfamiliar to
6 regulators, these kinds of facilities.

7 Q Is HTF the same as gasoline?

8 A No.

9 Q You made an analogy related to
10 refineries and spills of gasoline. Can you
11 describe the differences between HTF and gasoline?

12 A Well, I'll just state the obvious.
13 Gasoline contains benzene, a known human
14 carcinogen. HTF does not.

15 At the same time HTF is a extremely
16 hazardous substance, is recognized by the State of
17 California as an extremely hazardous waste, if
18 spilled. And presents risks to humans and the
19 environment when spilled.

20 Q Are you aware of a requirement, a legal
21 requirement that requires sampling of the location
22 of the spill?

23 A Yes. It's a paradigm that issues under
24 RCRA and Superfund, the same authority which has
25 been delegated to the states, and in turn to the

1 counties, that provides through regulation and
2 guidance, a methodology to sample at a spill site
3 to determine impacts to the environment.

4 Q I'm not asking whether there's a
5 guideline. I'm asking whether it's required.

6 A Yes.

7 MS. GULESSERIAN: I'm going to just
8 object to the label. We're not here to have him
9 present the legal analysis for the applicant.

10 HEARING OFFICER CELLI: That's true, you
11 know, that's --

12 MS. LUCKHARDT: That's fine.

13 HEARING OFFICER CELLI: -- something
14 that we can --

15 MS. LUCKHARDT: I can brief that.

16 HEARING OFFICER CELLI: The parties can
17 brief later, yes.

18 BY MS. LUCKHARDT:

19 Q And back to the differences between
20 gasoline and HTF, do you know if HTF is a RCRA
21 hazardous substance?

22 A No, as a matter of fact we don't, and I
23 was going to raise that in the testimony. It has
24 not been assessed.

25 We know it is a non-RCRA hazardous waste

1 in the State of California at concentrations
2 greater than 10,000 mg/kgm.

3 We do not know if it's a federal
4 hazardous waste. And that would require the USEPA
5 to conduct its own series of tests, toxicity
6 tests, to make that determination.

7 And I would put forward that that's a
8 determination that needs to be made.

9 Q You've discussed the leaks that occurred
10 at the, that you've looked at that have occurred
11 at the SEGS facilities. And isn't it true that
12 those leaks have occurred at flanges or flexible
13 connections or valves?

14 A No. I stated otherwise in my testimony.

15 Q Can you point to where it is that it's
16 somewhere else?

17 A I just testified on that tonight.

18 MS. GULESSERIAN: Yeah, we just went
19 over that that was in attachment 22 of the
20 testimony. And we summarized where those
21 locations were that were not valves or flanges.
22 That was in the presentation.

23 HEARING OFFICER CELLI: He read a list.

24 MS. LUCKHARDT: We're not aware of those
25 being something othr than fittings, valves or

1 flanges. So of that's what he testified to I'm
2 not sure I caught where the locations were.

3 HEARING OFFICER CELLI: Mr. Hagemann,
4 let me just ask you to summarize how they were
5 different, both fittings and flanges, et cetera.
6 Those samplings that you gave us of places where
7 the breaks occurred in other locations.

8 MS. GULESSERIAN: That's a question for
9 the applicant. I mean based on the attachment
10 that's been submitted, the locations of the spills
11 are not noted at flanges and valves. And the
12 rebuttal testimony says that that is where most of
13 the leaks occur.

14 Based on the evidence in the record it's
15 showing that the leaks occur elsewhere, as well. I
16 don't have the number, but -- so, --

17 HEARING OFFICER CELLI: Well, I'm sorry,
18 maybe I misunderstood. I thought that you had
19 said that you'd actually gone through the list and
20 stated where the breaks occurred.

21 MS. LUCKHARDT: That was --

22 MS. GULESSERIAN: Right. Well, he can
23 read them again.

24 HEARING OFFICER CELLI: I just wanted
25 to, just to speed things up and say, okay, if

1 there were -- I forgot the characterization Ms.
2 Luckhardt made, but she said flanges and --

3 MS. LUCKHARDT: Valves and joints.

4 HEARING OFFICER CELLI: What other
5 places did these breaks occur at?

6 MS. LUCKHARDT: I'm wondering if he can
7 point to specific locations where it states that
8 it occurred somewhere else.

9 HEARING OFFICER CELLI: Can you do that,
10 Mr. Hagemann?

11 THE WITNESS: Yes, I'll repeat. And
12 again, it's an attachment to my November 12
13 testimony. It's pretty much chronological in that
14 testimony, those attachments.

15 February 27, 2007, --

16 MS. LUCKHARDT: Okay, hold on.

17 HEARING OFFICER CELLI: The witness is
18 ready with the information.

19 THE WITNESS: Yeah, it's -- I don't have
20 it referenced to the pdf of this 439-page document
21 but I'll just read. And these descriptions would
22 be pulled straight without any -- as quotes from
23 the documents generated by FPL, or their
24 consultants.

25 February 27, 2007, a 1,000-gallon spill

1 from a heat collection unit. March 27, 2007, a
2 35-gallon spill from twisting of oil pipe
3 assembly. January 9, 2006, 75-gallon spill from a
4 packing port on double ball joint assembly.

5 February 16, 2007, 30,000-gallon spill
6 from valve stem in 18-inch HTF pump bypass valve.

7 February 15, 2006, 4000-gallon spill from heat
8 collector element piping torque tube. And
9 December 30, 2006, 50-gallon spill because valve
10 was left open by a worker.

11 And let me just say that this was just a
12 partial review. I just started at the top and
13 went through and listed all that I had seen. So,
14 one was a valve, on the 30,000 gallons.

15 HEARING OFFICER CELLI: Well, it sounds
16 like a couple of them were valves. And there was
17 a valve stem.

18 THE WITNESS: Well, one is a valve that
19 was left open.

20 HEARING OFFICER CELLI: Right.

21 THE WITNESS: That's a worker error.

22 MS. LUCKHARDT: A ball joint, I believe.

23 HEARING OFFICER CELLI: So a lot of them
24 were joints or that sort of thing. Thank you for
25 that. Moving right along.

1 MS. LUCKHARDT: I have nothing further.

2 HEARING OFFICER CELLI: Thank you. Any
3 redirect, if necessary?

4 MS. GULESSERIAN: No, no redirect.

5 HEARING OFFICER CELLI: We're going to
6 move on now. That was hazardous materials, is
7 that correct? And --

8 MS. GULESSERIAN: And waste management.
9 We covered both of them.

10 HEARING OFFICER CELLI: Oh, excellent.
11 So I've already received the evidence from CURE.
12 I think we're going to turn next to staff, unless
13 you're going to point the finger again at the
14 applicant.

15 MR. BABULA: The applicant, why not.

16 HEARING OFFICER CELLI: All right,
17 they're pointing at the applicant again. And we
18 have not taken in the applicant's hazardous
19 materials and waste management exhibits, so maybe
20 we should do that now and then you can get into
21 direct.

22 MS. LUCKHARDT: Okay. Beginning with
23 hazardous materials applicant moves exhibit 10,
24 AFC section 5.6; exhibit 116, the preliminary PSA
25 comments section 2-D; exhibit 135, the PSA

1 comments on hazardous materials; exhibit 172, the
2 project design refinements section 4.1.4; exhibit
3 179, project design refinements section 4.2.3.

4 Exhibit 248, declaration of Duane
5 McCloud on hazardous materials; exhibit 262,
6 declaration of Howard Valentine on hazardous
7 materials; exhibit 266, declaration of Jared
8 Foster on hazardous materials; exhibit 303,
9 declaration of Russ Kingsley on hazardous
10 materials.

11 HEARING OFFICER CELLI: Any objection by
12 CURE to the hazardous materials evidence coming
13 in, Ms. Gulesserian?

14 MS. GULESSERIAN: No objection.

15 HEARING OFFICER CELLI: Staff, any
16 objection?

17 MR. BABULA: No objection.

18 HEARING OFFICER CELLI: Exhibits marked
19 for identification as 10, 116, 135, 172, 179, 248,
20 262, 266 and 303 are received into evidence.

21 MS. LUCKHARDT: Moving on to waste
22 management, applicant moves exhibit 20, AFC
23 section 516; exhibit 32, AFC appendix D; exhibit
24 40, AFC appendix I; exhibit 48, AFC appendix K-6;
25 exhibit 68, response to CEC data requests 54

1 through 57 with attachment DR-56.

2 Exhibit 97, the Beacon waste stream
3 quantities, revised table 5.16-6; exhibit 145, the
4 PSA comments on waste management; exhibit 175, the
5 project design refinements section 4.1.8; exhibit
6 182, the project design refinements section
7 4.2.6.1; exhibit 208, project design refinements
8 attachment 8.

9 Exhibit 253, declaration of Duane
10 McCloud on waste management; exhibit 263,
11 declaration of Janine Forrest on waste management;
12 exhibit 268, declaration of Jared Foster on waste
13 management; exhibit 276, declaration of Jim
14 Fickerson on waste management; exhibit 291,
15 declaration of Mike Arvidson on waste management;
16 exhibit 304, declaration of Russ Kingsley on waste
17 management.

18 Exhibit 332, rebuttal testimony of Duane
19 McCloud on waste management. And exhibit 333,
20 rebuttal testimony of Mike Flack on waste
21 management.

22 HEARING OFFICER CELLI: Any objection
23 from CURE?

24 MS. GULESSERIAN: No objection.

25 HEARING OFFICER CELLI: Any objection

1 from staff?

2 MR. BABULA: No objection.

3 HEARING OFFICER CELLI: Exhibits marked
4 for identification as 20, 32, 40, 48, 68, 97, 145,
5 175, 182, 208, 253, 263, 268, 276, 291, 304, 332
6 and 333 will be received into evidence.

7 And before you ask any questions I think
8 we've now received all of applicant's testimony,
9 is that your understanding?

10 MS. LUCKHARDT: We're going to run a
11 double-check.

12 MS. GULESSERIAN: I wanted to clarify
13 that when we moved to enter our exhibits in at the
14 beginning, that that was sufficient for purposes
15 of each issue area, and that we didn't need to go
16 through it again.

17 HEARING OFFICER CELLI: They're all
18 received, all of them. I have, just to be clear,
19 CURE, we've received exhibits 600 through 638;
20 636, I believe, was the one that is still pending,
21 okay?

22 MS. GULESSERIAN: I also have 639, which
23 was --

24 HEARING OFFICER CELLI: You're right,
25 639. I was looking at that one, I thought. But

1 that's the, 639 was the request for environmental
2 impact analysis. So those are now received and
3 they're in evidence.

4 For applicant we've received exhibits 1
5 through 336; and then we withdrew 103 and 212; and
6 received the -- after 336, what is your highest
7 number, Ms. Luckhardt?

8 MS. LUCKHARDT: 339.

9 HEARING OFFICER CELLI: Okay, so 336,
10 and then we received the biological resources, was
11 that what it was?

12 MS. LUCKHARDT: Yeah, those were the --

13 HEARING OFFICER CELLI: That's 338.

14 MS. LUCKHARDT: Yeah, the additional --

15 MR. BABULA: Should be bio, soil and
16 water, bio and cultural.

17 MS. LUCKHARDT: Yeah, 337 are the
18 revised recommended conditions of certification
19 soil and water-1 with appendix I.

20 HEARING OFFICER CELLI: That's 337.

21 MS. LUCKHARDT: 337. 338 are the
22 revised conditions of certification for biological
23 resources; and 339 are the revised conditions of
24 certification for cultural resources.

25 HEARING OFFICER CELLI: Very good. And

1 those now have all been received into evidence
2 with the exception of two withdrawn exhibits.

3 MS. LUCKHARDT: Right. And just to
4 confirm, so then 198, which is a biology exhibit,
5 was received into evidence. If not, I move it at
6 this time.

7 HEARING OFFICER CELLI: Well, at this
8 time I'm just going to say that the record should
9 reflect that we have received into evidence
10 exhibit 1 through 339, except exhibit 103 and
11 exhibit 212.

12 MS. LUCKHARDT: That is correct.

13 HEARING OFFICER CELLI: And they're all
14 deemed received, so everybody's exhibits are in.
15 Staff's 500 through 506 are in the record so I
16 think we're good on housekeeping now.

17 So, with that, if you wouldn't mind
18 calling your first witness.

19 MS. LUCKHARDT: Okay. And you want me
20 to dispense with the formalities at this point.
21 Is there any question about, is there any need for
22 me to qualify these two gentlemen as experts?
23 Their résumés have been previously filed.

24 HEARING OFFICER CELLI: Have they both
25 been sworn in? I know Mr. McCloud was sworn in.

1 MS. LUCKHARDT: Hey, Mike, have you been
2 sworn in?

3 MR. FLACK: Yeah, I was sworn in.

4 HEARING OFFICER CELLI: Okay, Is there
5 any objection to Mr. Flack or Mr. McCloud
6 testifying as experts by CURE?

7 MS. GULESSERIAN: No objections.

8 HEARING OFFICER CELLI: No objection
9 from CURE.

10 MR. BABULA: No objection.

11 HEARING OFFICER CELLI: No objection
12 from staff. So you may proceed.
13 Whereupon,

14 DUANE McCLOUD and MICHAEL FLACK
15 were recalled as witnesses herein, and having been
16 previously duly sworn, were examined and testified
17 further as follows:

18 DIRECT EXAMINATION

19 BY MS. LUCKHARDT:

20 Q Okay, at this point, Mr. McCloud, do you
21 agree with Mr. Hagemann's comments that the type
22 and leakage of HTF spills at SEGS should be
23 anticipated at Beacon?

24 MR. McCLOUD: No, I do not. I think we
25 touched on it very briefly, the SEGS units go back

1 to a very long history. There has been a
2 tremendous amount, even through the series of SEGS
3 units of evolution of design, of evolution of
4 safety features.

5 And that evolution has continued. It
6 will continue into Beacon. We're going to walk in
7 the door of Beacon with 20-some years of lessons
8 learned as far as incorporation of design.

9 So I think that it's -- there's
10 definitely going to be a significant change,
11 significant improvement, significant modification
12 in what types of leakages we see at Beacon.

13 MS. LUCKHARDT: And Mr. Hagemann claims
14 that spills of HTF may result in significant
15 impacts to humans, wildlife and the environment.
16 To your knowledge have workers or the public been
17 harmed from the HTF spills at SEGS?

18 MR. McCLOUD: No, they have not. HTF,
19 by its nature, is a very contained product from
20 the perspective of, it actually was referenced
21 earlier, kind of gets thick at ambient
22 temperature, or even solidifies up.

23 Spills, when we've had them at the SEGS
24 facilities, have been contained onsite. There has
25 been, with the exception as was mentioned

1 previously with smoke from some spills, we've not
2 had a spill that's gone outside the site that's
3 impacted any outside waterway, wildlife, et
4 cetera.

5 Likewise, as far as impact to humans
6 we've never had any kind of serious medical case
7 related to an HTF spill at the SEGS facilities.

8 MS. LUCKHARDT: And have all the spills
9 at the SEGS facilities been cleaned up?

10 MR. McCLOUD: Yes, as soon as the
11 situation is identified, as soon as a spill is
12 identified it's addressed and cleanup process
13 begins immediately.

14 MS. LUCKHARDT: And then you heard just
15 a moment ago Mr. Hagemann talk about spills
16 involving gasoline. Can you describe the
17 differences you would see between gasoline and
18 HTF?

19 HEARING OFFICER CELLI: I'm going to, if
20 I may interpose my own objection, I don't know
21 that that's really relevant here, because we don't
22 really need to know. You don't speak to gasoline.
23 There won't be gasoline at Beacon, right?

24 We understand gasoline is very toxic.

25 MS. LUCKHARDT: I didn't bring it up.

1 HEARING OFFICER CELLI: But I think he
2 was just using it as an illustration to make a
3 point, but I don't think we need to take the time
4 to talk about it.

5 MS. LUCKHARDT: Okay, that's fine then.
6 Your discretion.

7 Okay, you know you were just talking
8 about the design improvements. Were there design
9 improvements from the first SEGS facilities to the
10 later SEGS facilities?

11 MR. McCLOUD: Yes, definitely. In fact,
12 there was a reference made, it's in the testimony
13 previously, about the largest spill that ever
14 occurred at any of the SEGS unit a few years ago.

15 That actually occurred on one of the Kramer
16 units. It was due to a valve failure; the valve
17 actually blew its stem.

18 By the time the Harper Lake units were
19 designed, that valve -- actually that entire
20 piping setup and process configuration no longer
21 existed.

22 So, going from mid '80s into designs
23 that actually took place in the late '80s, there
24 had already been significant changes in design to
25 address safety concerns as well as unit

1 efficiency.

2 MS. LUCKHARDT: And then you just heard
3 the list that Mr. Hagemann added of leaks on the
4 SEGS facilities. As you were listening to that
5 list were any of those leaks from straight pipe
6 sections?

7 MR. McCLOUD: No. Actually everything
8 that was identified was either some type of
9 fitting or, in some cases, they were actually heat
10 collection tubes. There was nothing in that list
11 that was a straight pipe run such as a header or a
12 primary feeder line.

13 MS. LUCKHARDT: So Mr. Hagemann's
14 suggestion that you use double-walled piping,
15 would that resolve any of those leaks?

16 MR. McCLOUD: No, it would not. We've
17 never had a leak in any of the SEGS units on a
18 straight line header or line of any significance.

19 MS. LUCKHARDT: Okay, the material
20 safety data sheets list potential hazards and
21 toxicological data from exposure, chronic exposure
22 to HTF. Does this automatically lead to the
23 conclusion that a spill of HTF may result in
24 significant impact to the environment? Either way
25 you guys can pick.

1 HEARING OFFICER CELLI: Just identify
2 who's speaking.

3 MR. FLACK: Mike Flack's going to
4 answer. The MSDS talks about the various health
5 risks. And chronic exposure would not be one of
6 those, given chronic, by definition, means
7 repeated exposure over a long duration.

8 If there would be a risk there would be
9 an acute risk due to handling of the material upon
10 its release. And the SPCC operational waste
11 management plan that's required, via conditions,
12 and the worker health and safety plan that's
13 required via conditions, would specify personal
14 protective equipment to manage that risk.

15 MS. LUCKHARDT: And are those plans
16 required by the conditions of certification?

17 MR. FLACK: Those plans are required and
18 SBC specifically is a LOR for this type of oil.
19 It's required under via the water waste discharge
20 waste discharge requirements listed in appendix H
21 of soil and water-1.

22 It's also listed in appendix E and F.
23 The operational waste management plan is condition
24 6. We were talking specifically about
25 identification of the waste and its

1 characteristics. That's waste condition 7, which
2 specifies that we need to get DTSC approval before
3 we can, site-specific DTSC approval before we can
4 manage the material in terms of its
5 characteristic.

6 MS. LUCKHARDT: Do the Energy Commission
7 conditions of certification require staff review
8 of these plans?

9 MR. FLACK: They do. They actually
10 require the CPM review. And DI, as I mentioned,
11 waste 7, DTS review for that particular condition
12 in terms of what's considered a hazardous or
13 nonhazardous waste.

14 MS. LUCKHARDT: And, Mr. McCloud, just
15 to clear up this point. Will Beacon include an
16 onsite installed filtration system?

17 MR. McCLOUD: There is no plan of
18 installing such a system at Beacon. Actually I
19 referenced previously, changes that were made
20 between Kramer and Harper, that was one of them.
21 The Harper plants do not have any type of onsite
22 permanently installed filtration system.

23 It is the practice, if there is a very
24 large spill, to in order, in the interests of
25 waste minimization, to recover part of that free

1 fluid. That was actually previously mentioned.

2 At Harper, as would be the case at
3 Beacon, if such a spill occurred, mobile equipment
4 would be used to recover that spill, that free
5 liquid in order to minimize the amount of soil
6 contamination.

7 MS. LUCKHARDT: And Mr. Hagemann just
8 made a comment about whether recovery of the HTF
9 was hazardous waste recycling. Can you comment on
10 that?

11 MR. McCLOUD: In his -- actually the
12 question's been asked. Currently DTSC does not
13 consider that to be recovery of a hazardous waste;
14 and that would include Kramer, where we actually
15 have an installed filtration system. Where we
16 would simply be talking about pulling a product,
17 or a part of the plant off the ground and putting
18 it back it came from, in this case.

19 MS. LUCKHARDT: Now your company
20 operates some of the SEGS units, correct?

21 MR. McCLOUD: Yes, we do.

22 MS. LUCKHARDT: So -- sorry, I didn't
23 mean to cut you off.

24 HEARING OFFICER CELLI: You know, as
25 long as you did, because I was going to ask a

1 question and then you started your question, but
2 it still bothered me. I just want to make sure I
3 heard what you said just now correctly.

4 MR. McCLOUD: Um-hum.

5 HEARING OFFICER CELLI: I started to
6 make a note that DTSC does not consider, and I
7 wasn't able to type fast enough, but it sounded
8 like you were going in the direction of saying
9 that HTF is not --

10 MR. McCLOUD: No, no, not at all. Not
11 at all. I'll clarify myself if I misspoke. Does
12 not consider recovery of free HTF as a hazardous
13 waste recycling or anything like that. Simply a
14 recovery of a, essentially part of the operating
15 part of the plant.

16 HEARING OFFICER CELLI: With the
17 expectation that you're just going to -- I mean
18 how would that work? If you don't mind my asking,
19 but this is going to be out in the desert, a sandy
20 area; even though you're going to cover the ground
21 with all that polymer. I just wonder, doesn't it
22 pick up a bunch of other materials?

23 MR. McCLOUD: Well, first of all, when
24 it's released most of all the compounds are gone.
25 We noted the light cloud, and Mr. Hagemann's

1 testimony correctly stated that you end up with a
2 wax-like substance. So what you're left with is
3 mostly very long chain hydrocarbons. Things are
4 not very mobile in the environment. Think of it
5 as a tar-like substance, okay.

6 That can be vacuumed up directly and
7 filtered to filter out the particulates. What is
8 residual, as Mr. Hagemann noted, needs to be
9 sampled, removed and sampled to insure that it
10 didn't migrate into the environment very far.

11 It wouldn't be expected to migrate very
12 far based on the nature of the material once it's
13 released.

14 HEARING OFFICER CELLI: Thank you very
15 much.

16 MR. McCLOUD: You're welcome.

17 HEARING OFFICER CELLI: You cleared up
18 that mystery for me.

19 MS. LUCKHARDT: Based on your operation
20 of the SEGS units, is handling an HTF spill an
21 unknown event?

22 MR. McCLOUD: Well, I'd kind of like to
23 say it was, but as has been pointed out in
24 testimony, there have been, you know, numerous HTF
25 spills over the years. It's something that the

1 plant is well versed in how to handle. There are
2 very specific processes that are followed when an
3 HTF spill occurs.

4 And it's something that's, while
5 undesirable, is certainly something that our
6 people are well trained in doing.

7 MS. LUCKHARDT: Mr. Hagemann expresses a
8 concern about proper notification in case of
9 spills. Do the required plans address the
10 notification requirement?

11 MR. McCLOUD: Yes. The final -- a
12 number, several plans, but will include specific
13 notifications required if an HTF spill does occur.

14 Those procedures are in place at the existing
15 SEGS units, and they're continuously refined and
16 updated.

17 HEARING OFFICER CELLI: Are they noted
18 in a specific condition of certification?

19 MR. McCLOUD: The spill pollution
20 control and countermeasures plan that's requested
21 as a LOR. It's a requirement for oil, it's part
22 of the oil management. And then that's in
23 appendix E, F and H.

24 It's required. There's several
25 conditions in waste sections 6, 7 and 9, where

1 we're asked to do plans that require notifications
2 of -- I'm sorry -- operational waste management
3 plan.

4 HEARING OFFICER CELLI: Thank you. I
5 just needed to know where I could find it.

6 MR. BABULA: Ken, some of those are
7 actually in the soil and water section, so you may
8 not have the right --

9 MR. McCLOUD: Yeah, we're jumping back
10 and forth. Thank you.

11 MR. BABULA: Soil and water also
12 contains components. So E, F and H appendixes of
13 soil and water have a whole bunch of conditions
14 regarding waste discharge requirements and so
15 forth. So you're going to find stuff in there, as
16 well.

17 HEARING OFFICER CELLI: I appreciate
18 that. I'm sure later when we get to briefs we'll
19 talk about that kind of thing because we are going
20 to need to know where to find that information.

21 MR. BABULA: It's only a 1,000-page
22 document.

23 HEARING OFFICER CELLI: I'm sorry,
24 please go ahead.

25 MS. LUCKHARDT: Do you agree, based on

1 the experience in the spills at SEGS, that
2 regulators are not used to regulating a substance?

3 MR. McCLOUD: No. In the case of the
4 SEGS facilities regulators involved in as far as
5 regulating those facilities are, I believe, have a
6 very good understanding of the product and
7 understanding of what it means to manage the HTF
8 at the site.

9 MS. LUCKHARDT: Turning to the items
10 attached to Mr. Hagemann's testimony. Does the
11 timeline contained in his exhibit 629, which is a
12 letter to Mr. Joe -- I'm going to try this --
13 Kowsky (phonetic) from Mr. Dan Brake describe an
14 immediate response by the facility to address the
15 leak?

16 MR. McCLOUD: Actually, yes, it does.
17 If an HTF leak does occur, the single and most
18 important action is to stop that HTF leak; prevent
19 it from any contamination or any spreading beyond
20 where it is.

21 And then, you know, as soon as it's
22 physically possible, the cleanup operation. That
23 is actually described in that letter.

24 MS. LUCKHARDT: Is it in Beacon's self
25 interest to reduce the number and amount of

1 spills?

2 MR. McCLOUD: Yes, definitely. Not only
3 just purely from an environmental standpoint,
4 which is obviously the most important reason. But
5 also from an operational standpoint. If spills
6 occur, even if it's a fairly minor spill, it, by
7 definition, represents part of the project or part
8 of the plant that's not available for service.

9 And it's clearly in the best business
10 plan of the plant to keep everything going,
11 everything performing.

12 MS. LUCKHARDT: And, Mr. Flack, in your
13 professional judgment, are the notification
14 requirements that are contained in the hazardous
15 materials management plan and spill prevention --

16 MR. FLACK: Pollution control and
17 counter-measure.

18 MS. LUCKHARDT: Thank you. And the
19 worker safety and health plan -- worker health and
20 safety plan adequate to address potential spills
21 at Beacon?

22 MR. FLACK: They are. And I'd add that
23 there's an emergency response plan required for
24 the project, as well, if I'm not mistaken. So,
25 there's notification requirements for this type of

1 material.

2 MS. LUCKHARDT: There was a comment that
3 was made by Mr. Hagemann about soil without
4 testing. Can you address that comment?

5 MR. FLACK: I can try. I think what he
6 was trying to get at is the material should be
7 characterized before it's managed, if I'm not
8 mistaken. And what his argument was, was the
9 material shouldn't be excavated and moved to the
10 LTU; rather it should be moved and placed on
11 plastic or some type of impermeable material. In
12 this case I would say plastic is mostly done, some
13 60 mil type plastic is usually used.

14 Sampled for characterization. And what
15 I mean by that is it should be sampled to the DTSC
16 criteria. The first thing would happen in the
17 project is once the material is released, by waste
18 condition-7 and what was written in the report of
19 waste discharge, a sampling program would ensue
20 such for material that had accumulated, such that
21 we would be able to sample it. And then provide
22 that sampling information to the DTSC for a
23 determination of what would be hazardous or
24 nonhazardous.

25 Because the formulation of HTF hasn't

1 changed, we said in the AFC that it would probably
2 be similar to the 10,000 mg/kgm guide that the
3 DTSC has used before. Though noting that the DTSC
4 specifically stated that they would have to have a
5 site-specific determination.

6 So what we would do once that was done
7 was if there was a subsequent release, the
8 material would be excavated, piled onto plastic;
9 covered; and sampled for characterization.

10 At that point in time it could be
11 determined whether or not it could go to the LTU
12 or not if it was above 10,000 mg/kgm, it would be
13 hauled offsite.

14 MS. LUCKHARDT: And then Mr. Hagemann
15 made a comment about liners at the remediation
16 area. Can you respond to that?

17 MR. FLACK: There was actually two
18 comments. There was the comment in my testimony
19 about an impermeable surface, and what I was
20 getting at was what I just mentioned Is we would
21 take the material; put it onto some plastic
22 material prior to characterization.

23 With regard to the LTU, we designed the
24 LTU consistent with Title 27 requirements, under
25 the report of waste discharge, we need the review

1 of the Regional Water Quality Control Board and
2 the staff.

3 That particular facility has operated
4 without problem, as I understand it, for those 20-
5 plus years at the SEGS facility.

6 So it is a clay material. It is
7 impermeable in a sense that the material resides
8 there for like about four to six months. So there
9 isn't much of an opportunity for this material to
10 migrate. In fact, the material, itself, once it's
11 released as noted, wax-like substance, it doesn't
12 tend to move in the environment much. Particularly
13 vertically through a clay.

14 HEARING OFFICER CELLI: Any further
15 examination?

16 MS. LUCKHARDT: Is there anything else
17 either of you would like to add?

18 MR. FLACK: I'm just going to say a lot
19 of the questions that Mr. Hagemann had were good
20 specific questions regarding how waste is managed
21 and characterized.

22 If I look at the FSA and the conditions
23 of certification, there's several sections that
24 have specific plan requirements. Those specific
25 plan requirements will detail the procedures and

1 the protocols for management of this waste
2 material if it's released.

3 So I would say it's in the conditions.
4 SPPC and operational waste management plan are two
5 things that need to be done, and will specifically
6 address many of his concerns, I believe.

7 MS. LUCKHARDT: The witnesses are
8 available for cross.

9 HEARING OFFICER CELLI: CURE, cross?

10 CROSS-EXAMINATION

11 BY MS. GULESSERIAN:

12 Q Mr. McCloud, in rebuttal you described
13 the design for Beacon. Are those SEGS facilities
14 laid out in sections like those proposed for
15 Beacon? In other words, you put in your rebuttal
16 testimony that the solar field is separated into
17 four to ten sections.

18 MR. McCLOUD: That's correct.

19 MS. GULESSERIAN: Is that the same as
20 the facility layout for Beacon?

21 MR. McCLOUD: You asked if Beacon was
22 the same as Beacon.

23 MS. GULESSERIAN: Excuse me. Are the
24 SEGS facilities laid out in sections like those
25 proposed for Beacon?

1 MR. McCLOUD: Not like Beacon. They are
2 laid out in sections, however.

3 MS. GULESSERIAN: Okay. In your
4 rebuttal testimony you stated that -- well, go
5 back to that design. Can you describe the design
6 of the Beacon project in a little bit more detail?

7 MS. LUCKHARDT: Are we talking about
8 something that's already in the documents? You're
9 asking him the design --

10 (Parties speaking simultaneously.)

11 MS. LUCKHARDT: -- to describe the --

12 MS. GULESSERIAN: Okay, you're --

13 MS. LUCKHARDT: -- design of the Beacon
14 project?

15 MS. GULESSERIAN: Just a minute.

16 Okay, we'll get there. In your rebuttal
17 testimony you stated that leaks most often occur
18 at valves and flanges. Where do spills otherwise
19 occur? If they're most often at valves and
20 flanges, where else?

21 MR. McCLOUD: Other fittings.
22 References were made to ball joints previously.
23 Again, connections at BHCE tubes, themselves.
24 Again, at fittings and joints.

25 MS. GULESSERIAN: In your rebuttal

1 testimony you stated that as much as 115,000
2 gallons of HTF is contained between isolation
3 valves in the main header and east/west laterals
4 that supply each section.

5 In a failure of a valve on the main
6 header or east/water lateral section, is it true
7 then that the maximum potential spill may be
8 115,000 gallons of HTF?

9 MR. McCLOUD: No, it's not. Because a
10 valve failed does not mean that the entire
11 contents of the pipe it's connected to are
12 immediately going to shoot out into the
13 environment.

14 In the event of a failure on the main
15 header, the plant would immediately begin to be
16 shut down. It's essentially de-pressurizing the
17 plant. So that the driving force for the HTF to
18 leak is immediately turned off.

19 MS. GULESSERIAN: Okay. And so what
20 would the maximum potential spill then be on that
21 main header?

22 MR. McCLOUD: I cannot answer that.

23 MS. GULESSERIAN: Okay. Do you consider
24 a vapor cloud from an HTF spill that requires
25 shutdown of a state highway to constitute offsite

1 transport?

2 MS. LUCKHARDT: Are you looking at
3 offsite transport of the product, itself? Can you
4 provide some more specificity of what you're
5 asking?

6 MS. GULESSERIAN: Sure. I'll refer to
7 their rebuttal testimony to be more specific.

8 (Pause.)

9 HEARING OFFICER CELLI: Maybe we can
10 come back to this question.

11 MS. GULESSERIAN: Yes.

12 HEARING OFFICER CELLI: Move to some
13 other other area of questioning.

14 MS. GULESSERIAN: With that question.
15 Well, actually, --

16 HEARING OFFICER CELLI: Unless this is
17 your last question?

18 MS. GULESSERIAN: Okay, you were
19 describing what the practice is to recover free
20 liquid in the event of a spill. Is it correct
21 that you're saying it's going to be vacuumed up?

22 MR. McCLOUD: Essentially, yes.

23 MS. GULESSERIAN: Okay. And where is it
24 going to be vacuumed up from? From right where it
25 spills?

1 MR. McCLOUD: Right where it spills,
2 yes.

3 MS. GULESSERIAN: Okay. And what is it
4 vacuumed into?

5 MR. McCLOUD: It will go into a truck,
6 called a suck truck, but a vacuum truck.

7 MS. GULESSERIAN: Okay. And where does
8 that truck then go?

9 MR. McCLOUD: It would take the product,
10 return it to one of the storage tanks, HTF storage
11 tanks in the system. So we would return it back
12 to the system.

13 MS. GULESSERIAN: And do you just -- you
14 return it directly into the system? Or do you
15 filter it of this sand and dirt or other
16 contaminants?

17 MR. McCLOUD: There is typically a
18 strainer on the suction side of the vacuum truck,
19 so that the dirt or sand or whatever is, for the
20 most part, left behind. Again, it's a process
21 with free liquid, so we're not trying to pull mud
22 out, and pull the HTF out of everything. So it's
23 simply the free liquid that's sitting on top
24 that's clearly free liquid.

25 MS. GULESSERIAN: Okay. So is there a

1 filtration facility?

2 MR. McCLOUD: No.

3 MS. GULESSERIAN: Okay, so it's on the
4 back of a truck?

5 MR. McCLOUD: Yeah, it would be in the
6 line of the truck, on the back of a truck.

7 MS. GULESSERIAN: So your filtration is
8 occurring on the back of the truck. And then the
9 HTF is being put directly into a tank?

10 MR. McCLOUD: Correct.

11 MS. GULESSERIAN: Back to the offsite
12 release. You said that, in your rebuttal
13 testimony, that this spill --

14 MS. LUCKHARDT: Where are you, just so
15 we can have it?

16 MS. GULESSERIAN: I'm on exhibit 332,
17 page 3.

18 MS. LUCKHARDT: Thank you.

19 MS. GULESSERIAN: That this large spill
20 nonetheless resulted in no offsite release of HTF
21 and all contaminated soils.

22 So, my question was, offsite release,
23 was do you consider a vapor cloud from an HTF
24 spill that requires shutdown of a state highway to
25 constitute -- I'll correct my question -- an

1 offsite release?

2 MR. McCLOUD: It's an offsite release,
3 it's not an offsite release of HTF.

4 MS. GULESSERIAN: Okay.

5 MR. McCLOUD: Smoke, it was an offsite
6 release of smoke that evolved from the HTF
7 release. Maybe it's semantics, but --

8 MS. GULESSERIAN: I'll move on in the
9 interest of time, but I might have to return to
10 Mr. McCloud.

11 HEARING OFFICER CELLI: Appreciate it.

12 MS. GULESSERIAN: Mr. Flack, in
13 determining whether free-standing HTF from an HTF
14 release is or is not non-RCRA hazardous waste,
15 where will the HTF be sampled following a spill?

16 MR. FLACK: Determining the non-RCRA.
17 So this is after we vacuumed up the free liquids
18 for recycling?

19 MS. GULESSERIAN: Uh-hmm.

20 MR. FLACK: So what's residual then is
21 what's residual in the soil. I would imagine the
22 SPCC plan would specify a sampling protocol for
23 sampling the soil in a manner that would
24 characterize what was removed, both in terms of
25 what stockpiled via the removal. And then to

1 verify that the material had been removed from the
2 soil in a manner that would suggest a clean
3 removal.

4 MS. GULESSERIAN: So are you saying that
5 there's no -- you are vacuuming in every instance
6 and there's no free-standing HTF?

7 MR. FLACK: That's correct.

8 MS. GULESSERIAN: Okay.

9 MR. FLACK: Because a liquid, you can't
10 manage a liquid hazardous waste.

11 MS. GULESSERIAN: Okay. And then with
12 the resulting soil that's left underneath, where
13 are you testing that to determine whether it is or
14 is not a non-RCRA.

15 MR. FLACK: You would remove probably to
16 visual initially, and stockpile the visual on
17 plastic. You'd then sample the stockpile via
18 composite methods or methods that would be
19 approved through the SPCC plan.

20 That would characterize the material via
21 the DTSC process, whether it was going to be sent
22 to the LTU or taken off as hazardous waste.

23 You would then return to the excavation
24 and you would sample the excavation in a manner
25 that confirmed that all the material was removed.

1 So you would sample the in-place soils.

2 There's a two-part process there.

3 There's a part to characterize the material that
4 was excavated for taking it to the LTU or not.

5 And then there's a second process which means you
6 would sample the soil to confirm its removal from
7 the environment.

8 MS. GULESSERIAN: In the application for
9 certification and the testimony that's been filed
10 in this proceeding, the description of the
11 handling of contaminated soils states that the
12 soils will be moved directly to the land treatment
13 unit.

14 Is there -- could you point to me where
15 you've included in your project this process for
16 moving the soil to a plastic?

17 MR. FLACK: We haven't done that because
18 I'm giving you the plans that are required, the
19 SPCC plan, the operational waste management plan,
20 or where that's going to be discussed in detail.

21 MS. GULESSERIAN: So?

22 MR. FLACK: Which is a requirement of
23 certification.

24 MS. GULESSERIAN: Why are there no
25 provisions for handling the spilled free-standing

1 HTF included in the application or the report of
2 waste discharge? That have been filed so far in
3 this proceeding.

4 MR. FLACK: The report of waste
5 discharge was written specifically to manage the
6 waste. It wasn't a spill pollution control and
7 countermeasures plan. It was a waste management
8 plan to look at the residual. It excluded the
9 management of the free-standing liquid.

10 MS. GULESSERIAN: So the report of waste
11 discharge excludes the management of handling
12 free-standing HTF?

13 MR. FLACK: Because it's a recycled
14 material.

15 MS. GULESSERIAN: Okay. Could I go back
16 and ask a question about this plastic area where
17 the soils are contained. Where is that located?

18 MR. FLACK: Actually you take the
19 material from where it was released and place it
20 right next to -- stockpile it right next to where
21 the release was. That would be the intent.

22 And, again, this would be something that
23 we would write -- that would be written into the
24 SPCC plan.

25 MS. GULESSERIAN: Okay. Is that -- I

1 guess, again, is that described anywhere in the
2 application for certification for this project?
3 And if so, can you point to me where?

4 MR. FLACK: It's not described in there
5 because it wasn't written to the level of detail
6 in the application for certification. What was
7 written was then the --

8 MR. BABULA: It's in the FSA.

9 MR. FLACK: -- I'm sorry, in the FSA, as
10 well. And it was not -- is it in the FSA, Jared?

11 HEARING OFFICER CELLI: Actually this is
12 testimony, it's not a conversation.

13 MR. FLACK: I'm sorry, you're right,
14 you're right, I'm sorry.

15 (Laughter.)

16 MR. FLACK: To my knowledge it was not
17 in the application for certification; neither was
18 it in the report of waste discharge. Because we
19 stated in the report of waste discharge that we
20 would take the material up and move it into the
21 LTU upon characterization. Okay.

22 So we did not talk about the free-
23 standing liquids because at the time that was
24 going to be a recycled material to be taken up and
25 recycled into the process.

1 So what's residual, then, is what's
2 contained on at the soil.

3 MS. GULESSERIAN: Okay, in the final
4 staff assessment, and I can find the page, it
5 describes that plastic sheeting will be placed on
6 top of the contaminated soil in the land treatment
7 unit. Is that what you're referring to when you
8 talk about plastic?

9 MR. FLACK: That's one of the ways of
10 managing the waste, correct. That was one of the
11 statements.

12 MS. GULESSERIAN: Okay. And is that
13 different than what you're describing today,
14 tonight? The plastic that is placed on the soil
15 somewhere near where the spill occurs?

16 MR. FLACK: There's ways of managing it.
17 You take it out from the excavation area right
18 where it's spilled and put it onto plastic;
19 characterize it; then move it over. It still
20 stays, and it's covered with plastic, in the LTU,
21 as well.

22 MS. GULESSERIAN: What's the potential
23 size of this plastic area where contaminated soil
24 is.

25 MR. FLACK: Obviously it depends on the

1 size of the release, but you can put a lot of
2 plastic down for a large excavation of excavated
3 material. I've done it many times.

4 (Pause.)

5 MS. GULESSERIAN: Excuse me, this is
6 technical. I need some help.

7 HEARING OFFICER CELLI: How much --

8 MR. BABULA: I'm going to be quick if
9 that's your --

10 HEARING OFFICER CELLI: -- while CURE is
11 conferring --

12 MR. BABULA: We mainly want to clear up
13 a few things.

14 HEARING OFFICER CELLI: I just want to
15 know who we haven't heard from and how much time
16 are you thinking?

17 MR. BABULA: About five minutes. As
18 soon as she's done we're ready to -- but then I
19 don't know how much cross she's going to have.

20 HEARING OFFICER CELLI: I'd just note
21 that it's ten minutes to 9:00. We've all been
22 very patient and --

23 MS. GULESSERIAN: Okay, I guess --

24 HEARING OFFICER CELLI: -- you should be
25 winding down.

1 MS. GULESSERIAN: I'm trying to learn
2 about this plastic area that I've never heard
3 about before.

4 BY MS. GULESSERIAN:

5 Q Is it -- can you describe to me a little
6 bit more the thickness of this plastic material?

7 HEARING OFFICER CELLI: I'm going to --
8 I just want to say that, you know, we've seen
9 loads of spills where they put that blue and black
10 plastic over a mound of dirt of varying sizes.
11 The sky's the limit on how big a size; it depends
12 on the spill.

13 And rather than go into this area of how
14 much, what size is the plastic and that kind of
15 thing, I wonder if we could just keep it relevant
16 to their testimony.

17 MS. GULESSERIAN: I'd like to have, get
18 the facts in the record to determine whether they
19 are meeting the statutes that I am aware of. So I
20 just need to ask a few questions about what these
21 facts are, because they're not.

22 HEARING OFFICER CELLI: Do you mind if I
23 ask how few questions?

24 MS. GULESSERIAN: I'm almost done. It's
25 just that this is new. Actually I didn't really

1 have much more.

2 MS. LUCKHARDT: Well, I guess I just
3 have a general comment at this point. We don't
4 have a spill. We're not designing for a specific
5 situation.

6 We're talking about the level of
7 analysis that we need to conduct for a permitting
8 level of this project. And I think that this
9 level of detail is unnecessary at this point for,
10 to determine permitting of this project.

11 HEARING OFFICER CELLI: Well, I'm just
12 going to allow a few more questions. It is
13 relevant and I'm going to allow her to just
14 briefly ask a couple more questions, and then
15 we've got to move on. So if we can finish this
16 area, I would appreciate it.

17 MS. GULESSERIAN: Okay. Will the
18 plastic be placed directly on the soil?

19 MR. FLACK: Echoing Jane's comment, this
20 would be detailed in an SPCC plan. The intent of
21 removing material from an HTF release would be to
22 put plastic down on the ground and putting the
23 excavated materials on top of the plastic
24 temporarily, and then covering with plastic while
25 you were characterizing the material.

1 Upon characterization of the material,
2 it would be moved to the LTU. Set in the LTU and
3 covered with plastic and staged for biological
4 treatment.

5 MS. GULESSERIAN: Okay, thank you.

6 MR. FLACK: Does that make sense?

7 MS. GULESSERIAN: It makes sense. And
8 just for clarification, the LTU, is it correct,
9 that it's an unlined -- the LTU is an unlined --

10 MR. FLACK: No, --

11 MS. GULESSERIAN: As Mr. -- if you were
12 listening to Mr. Hagemann's testimony, he
13 described what he read in the FSA that it's on a
14 clay, low permeable layer underneath?

15 MR. FLACK: The LTU is --

16 MS. GULESSERIAN: Does the FSA correctly
17 describe --

18 MR. FLACK: The FSA is correct.

19 MS. GULESSERIAN: Okay.

20 MR. FLACK: And his testimony to what is
21 absolutely correct.

22 MS. GULESSERIAN: Okay, thank you.

23 MR. FLACK: You're welcome.

24 HEARING OFFICER CELLI: I'm glad we
25 cleared that up.

1 MS. GULESSERIAN: I have no further
2 questions.

3 HEARING OFFICER CELLI: Thank you.

4 MS. GULESSERIAN: Thank you.

5 HEARING OFFICER CELLI: In fact, I've
6 almost lost where -- oh, cross of these witnesses
7 by staff?

8 MR. BABULA: I have no questions.

9 HEARING OFFICER CELLI: Redirect?

10 MS. LUCKHARDT: Just a couple of
11 questions here.

12 REDIRECT EXAMINATION

13 BY MS. LUCKHARDT:

14 Q Mr. Flack, you were just asked --

15 MR. FLACK: Sorry.

16 MS. LUCKHARDT: You were just asked
17 about the liner and the land treatment unit. Do
18 you have any concerns about how that is being
19 treated as far as the compaction, that it's clay
20 soil that's being used, or whether that should
21 have an additional liner?

22 MR. FLACK: The LTU is designed under
23 Title 27 requirements. And it will operate, there
24 is a program to compact the clay. There's a
25 program to manage the waste and sample yearly on

1 an annual basis to confirm there would be no
2 leakage through the clay liner.

3 Performance at SEGS would tend to
4 suggest that this particular design works very
5 well. The material, itself, isn't mobile in the
6 environment. It's not going to leak, you know,
7 come out of solution from the matrix it's bound in
8 and leak through the clay. It just isn't that
9 kind of material once it's released. So the
10 design, itself, has shown itself to perform well.

11 And we have the other thing that's
12 important to understand, too, is the variable
13 depth of the groundwater. In the area for the LTU
14 it's about 260 feet to groundwater.

15 HEARING OFFICER CELLI: Next question?

16 MS. LUCKHARDT: Mr. McCloud, does the
17 letter that is included as exhibit 629 describe a
18 sampling protocol after a spill at one of the SEGS
19 facilities?

20 MR. McCLOUD: Yes, it does.

21 MS. LUCKHARDT: I think I'm going to
22 leave it at that.

23 HEARING OFFICER CELLI: No further
24 redirect?

25 MS. LUCKHARDT: No.

1 HEARING OFFICER CELLI: Limited to the
2 scope of the questions on redirect, any cross from
3 CURE?

4 MS. GULESSERIAN: No further questions.

5 HEARING OFFICER CELLI: Any cross from
6 staff?

7 MR. BABULA: No.

8 HEARING OFFICER CELLI: Thank you. Any
9 further witnesses?

10 MS. LUCKHARDT: No.

11 HEARING OFFICER CELLI: Thank you. Now
12 where we are is with staff, right? Have your
13 witnesses been sworn?

14 MR. BABULA: They have not. They need
15 to be sworn in.

16 HEARING OFFICER CELLI: We need to swear
17 two more witnesses in. Please stand.
18 Whereupon,

19 ELLEN TOWNSEND-HOUGH and GEOFFREY LESH
20 were called as witnesses herein, and after first
21 having been duly sworn, were examined and
22 testified as follows:

23 HEARING OFFICER CELLI: Please state
24 your names and spell them for the record.

25 MS. TOWNSEND-HOUGH: My name is Ellen

1 Townsend-Hough. Townsend, T-o-w-n-s-e-n-d hyphen
2 H-o-u-g-h.

3 MR. LESH: I'm Geoffrey Lesh, it's
4 G-e-o-f-f-r-e-y L-e-s-h.

5 MR. BABULA: Okay, thank you.

6 DIRECT EXAMINATION

7 BY MR. BABULA:

8 Q I'm going to start with Ellie, who is
9 dealing with the waste and hazardous waste
10 management.

11 So you just heard all this testimony,
12 and I think there's some confusion or there seems
13 to be we need some clarification on the process if
14 there's a spill. So can you just quickly go
15 through and try to address that comment and any
16 other issues that come up?

17 MS. TOWNSEND-HOUGH: Okay. Ellie
18 Townsend-Hough. I guess it's just important to
19 note that as the technology has improved, the
20 regulators have also improved.

21 We are working together with both the
22 Regional Board and DTSC. And we also are working
23 with staff in the soil and water area to establish
24 ways to better manage any of the HTF spills.

25 And basically, as was described by the

1 applicant, it there's a spill there's a staging
2 area, and then there is determination what goes to
3 the land treatment unit.

4 Depending on what the Department of
5 Toxic Substances Control establishes as a
6 hazardous criteria, whether it's 10,000 mg/kgm, or
7 something lower, wherever that cutoff is,
8 whatever's nonhazardous, only a nonhazardous
9 substance can go in the land treatment unit.

10 A hazardous substance, anything like
11 greater than 10,000 mg/kgm, depending on DTSC's
12 determination, would go to a class 1 landfill.

13 There has to be a staging area to
14 determine what's hazardous and what is
15 nonhazardous. Staff set up a series of data
16 requests, and the data responses were addressed in
17 the applicant's refinement. I think it's the
18 supplemental document in the refinement.

19 There is actually a description how the
20 waste would be handled. There is also a
21 description that actually shows where the land
22 treatment unit is. And it talks about the cutoff.

23 There is also descriptions --

24 MS. GULESSERIAN: I'm sorry, do you know
25 what we're referring to here as far as an exhibit

1 goes?

2 MS. TOWNSEND-HOUGH: It's the
3 refinement. I don't know the number of -- I think
4 that's it, it's like the biggest document we
5 received, the project refinements.

6 HEARING OFFICER CELLI: Okay, and so do
7 we have an exhibit number?

8 MR. BABULA: It's one of the applicant's
9 exhibits.

10 (Parties speaking simultaneously.)

11 MS. LUCKHARDT: That's broken up into a
12 million different exhibits, because it's by
13 subject areas, so.

14 (Parties speaking simultaneously.)

15 MS. TOWNSEND-HOUGH: It should be a
16 section just under waste, and it talks about the
17 land treatment unit and HTF spills.

18 Okay. And also in the Board's waste
19 discharge requirements, the Board has described in
20 their appendices, exactly how the waste is
21 supposed to be handled, whether it's hazardous or
22 nonhazardous.

23 We've gone -- what we tried to do is
24 we've asked for a spill prevention counter control
25 measure plan. We've also asked for a very

1 comprehensive operation management plan. We've
2 asked for sampling. And all of these are in the
3 conditions of certification. Conditions of
4 certification-6, conditions of certification-7 and
5 condition of certification-9.

6 So what we've tried to do is be very
7 rigorous on the handling of the HTF spills.

8 MR. BABULA: In your opinion, based on
9 your work in this area, your analysis, reviewing
10 all the testimony, do you believe that this
11 facility can operate in a safe manner to both
12 human and the environment?

13 MS. TOWNSEND-HOUGH: Yes, I do.

14 MR. BABULA: Should I just --

15 HEARING OFFICER CELLI: Mr. Lesh, you
16 might as well go ahead and ask your questions
17 there.

18 BY MR. BABULA:

19 Q So, Mr. Lesh, let's see, now you were
20 doing more of the engineering. You submitted
21 supplemental testimony. We won't have to go over
22 that, but are there are a couple areas that have
23 come up that you'd like to address regarding some
24 of the stuff that Mr. Hagemann has brought up?

25 HEARING OFFICER CELLI: I wonder if just

1 rather than invite an objection for a narrative we
2 focus his testimony a little more on specifically
3 what's needed in the record.

4 MR. BABULA: It's so easy to read it in
5 the record, it's right there.

6 HEARING OFFICER CELLI: If you wouldn't
7 mind. Just narrow the testimony.

8 MR. BABULA: Okay.

9 MR. LESH: The area that I want to focus
10 on is the hazardous materials management, in which
11 we are focused on maintaining control of any
12 hazardous materials onsite. And maintaining their
13 containment so that up until the moment they're
14 released accidentally, then they become waste,
15 hazardous waste.

16 But up until the moment of loss, like
17 containment and leaks and those sorts of things is
18 the area where I'm focused. And the purpose of
19 the section is to prevent offsite consequences
20 from releases that could impact the public.

21 So, with that in mind we review how the
22 material is being contained, the specifications
23 it's being held within, whether they're API or
24 ASME codes, and what kind of secondary containment
25 they have underneath their expansion tanks and

1 heat exchangers, et cetera.

2 Some of the comments that I think I need
3 to address were the ones that came from Mr.
4 Hagemann. Specifically recommended, you know, why
5 not double-wall piping. And I concur with the
6 applicant that where the leaks are occurring are
7 in joints, flanges, valves, flex tubes, ball
8 joints, things that you have to make and break,
9 have lots of pieces in them.

10 The more of them you have the more
11 potential you have for small leaks to occur, and
12 they take diligence.

13 For the most part, these things don't
14 offer an impact in the offsite public because the
15 material that's leaking has low toxicity and low
16 vapor pressure, low volatility.

17 The entire site -- and the solar field
18 is bermed. Any leaks, even a big one, will not
19 run offsite. Anything in the power block, where
20 the big spill did occur when they blew a valve
21 stem at one point, remains within the power block
22 because it's also bermed separately, it has
23 secondary containment areas. And in the event
24 that you have a big spill, it gets cleaned up.
25 There is no significant risk to the offsite

1 public.

2 For protecting onsite employees that's
3 handled in our worker safety and fire protection
4 sections, and it's covered by different sets of
5 rules which come from OSHA through Cal-OSHA. In
6 there we look at LORS compliance.

7 And between all these things we make
8 sure that there is personal protective gear
9 issued; that we have all the safety plans; the
10 spill management plans; and the reporting plans to
11 the appropriate agencies.

12 MR. BABULA: Just to summarize, based on
13 your information and reviewing the applicant's
14 information and all the testimony, do you feel
15 this plant can operate safely with regards to HTF
16 fluid?

17 MR. LESH: I do.

18 MR. BABULA: No further questions.

19 HEARING OFFICER CELLI: Thank you.
20 Applicant, cross?

21 MS. LUCKHARDT: I have no cross.

22 HEARING OFFICER CELLI: CURE, cross?

23 CROSS-EXAMINATION

24 BY MS. GULESSERIAN:

25 Q Mr. Lesh, I'm referring to your

1 testimony. You state that there's 1.3 million
2 gallons of HTF contained in the pipes and heat
3 exchanger, is this correct?

4 MR. LESH: To my recollection, yes.

5 MS. GULESSERIAN: Okay, is this what you
6 based your analysis of potential impacts on?

7 MR. LESH: Yes.

8 MS. GULESSERIAN: Before reviewing Mr.
9 Hagemann's testimony and hearing what you heard
10 today, were you aware that there is free-standing
11 HTF below a spill that involves a cleanup process?

12 MR. LESH: Yes.

13 MS. GULESSERIAN: Okay, can you tell me
14 where in the final staff assessment this process
15 is described and analyzed?

16 MR. LESH: It's not described in the
17 hazardous materials management section.

18 MS. GULESSERIAN: Is it analyzed?

19 MR. LESH: That would be results of a
20 spill, so it would be a waste issue.

21 MS. GULESSERIAN: Okay. I'm trying to
22 cut down my questions. I'm skipping some.

23 Before hearing what you heard today,
24 were you aware that there is a interim process, my
25 words for it, for handling contaminated soils

1 after a spill? By interim I mean some other --
2 this plastic staging area prior to placement in a
3 land treatment unit, for testing for hazardous
4 waste.

5 MR. BABULA: Is that Ellie's topic?

6 MS. GULESSERIAN: Hazardous materials, I
7 don't know who.

8 MR. BABULA: She's hazardous materials
9 once it's in the ground. He would be the piping
10 and leaking.

11 MS. GULESSERIAN: Okay.

12 MR. BABULA: I don't know if you're
13 asking the right person.

14 MS. GULESSERIAN: Okay. Let me see if I
15 have any other questions for Mr. Lesh first.

16 (Pause.)

17 BY MS. GULESSERIAN:

18 Q Are you -- is it your area to analyze
19 the recycling of HTF that we heard about today?
20 Do you analyze recycling of hazardous substances?

21 MR. LESH: No.

22 MS. GULESSERIAN: Okay.

23 MR. LESH: Not specifically, no.

24 MS. GULESSERIAN: And did you analyze
25 the recycling of HTF as part of this project?

1 MR. LESH: No.

2 MS. GULESSERIAN: You stated that you
3 analyzed 1.3 million gallons of HTF in the system.

4 This is in your written testimony. Are you aware
5 that in the soil and water section of the FSA
6 staff states that approximately 2.4 million
7 gallons of HTF will be utilized at any one time at
8 the facility?

9 MR. LESH: I learned that today.

10 MS. GULESSERIAN: Okay. So it's safe to
11 say that since it says 1.3, and you analyzed 1.3,
12 you have not yet analyzed 2.4 million gallons of
13 HTF?

14 MR. LESH: Given the material, the
15 volume of it, provided the applicant does as they
16 stated in their designs that they would have
17 containment for that, plus rainfall, berming,
18 secondary containment, it's low toxicity and low
19 volatility, it would be still okay.

20 That particular volume didn't come into
21 the analysis. It's the way it's managed that
22 comes into the analysis.

23 Unless it's something that has potential
24 for moving offsite, which would be a more toxic
25 material like ammonia or something, then the

1 volumes do become very important.

2 MS. GULESSERIAN: Okay, so when you said
3 earlier that your analysis was based on 1.3
4 million gallons of HTF, you're now saying that it
5 doesn't matter how much HTF is used at a project
6 site?

7 MR. LESH: No, I didn't say that. But
8 in this particular case I think the volume did
9 change when the refinement came in.

10 MS. GULESSERIAN: So now there is an
11 additional 1.1 million gallons of HTF on the
12 project site?

13 MR. LESH: The design remains the same
14 except for the volumes. But the design, the
15 safety factors on the design remain the same. It
16 would still be okay in this case.

17 MS. GULESSERIAN: Do you know whether
18 the change of this additional 1.1 million gallons
19 is more HTF in the piping? More stored at the
20 site? What accounts for the change?

21 MR. LESH: I believe it's partly due to
22 more expansion tanks in the system, which would
23 have secondary containment underneath them. And
24 the other details I don't know exactly.

25 HEARING OFFICER CELLI: The record

1 should reflect it's a quarter after 9:00.

2 MS. GULESSERIAN: I'll just ask a few
3 questions of Ms. Townsend-Hough.

4 MS. TOWNSEND-HOUGH: Hough, like rough
5 and tough.

6 MS. GULESSERIAN: Okay, thank you.
7 Townsend-Hough. Thank you.

8 Okay, in your testimony just now you
9 stated that the soil is placed in a staging, you
10 analyzed the soil being placed in a staging area,
11 is that correct?

12 MS. TOWNSEND-HOUGH: Yes.

13 MS. GULESSERIAN: Okay. In the FSA,
14 page 4.9-173, you state that a staging area is
15 allocated in the LTU for storage of HTF-impacted
16 soils while they're being characterized. Is that
17 what you were referring to?

18 MS. TOWNSEND-HOUGH: Yes.

19 MS. GULESSERIAN: Okay. And do you
20 believe that is the same or different than what
21 you heard from Mr. Flack regarding the staging
22 area in the middle of the solar field?

23 MS. TOWNSEND-HOUGH: I'll have to think
24 about what he said.

25 MS. GULESSERIAN: Mr. Flack testified

1 that before moving the soil to the LTU staging
2 area that you describe in the FSA they move the
3 soil to a plastic sheet within the solar field.
4 I'm adding that, I don't know, he didn't say it's
5 in the solar field.

6 MS. LUCKHARDT: I would object to that
7 characterization. I think that was simply an
8 example of a place where it could be staged.

9 HEARING OFFICER CELLI: I will --

10 MS. GULESSERIAN: Well, if it's not
11 staged there, she testified that that's where it's
12 staged. Maybe we should --

13 HEARING OFFICER CELLI: I'm not sure of
14 that. What the testimony was, was that there was
15 plastic on the ground and that's where it was
16 loaded up on prior to going to the LTU. Do I have
17 that right? That's what I heard.

18 MS. GULESSERIAN: And did you hear the
19 summary that Mr. Celli just provided regarding
20 this plastic staging area?

21 MS. TOWNSEND-HOUGH: Yes.

22 MS. GULESSERIAN: Do you know where that
23 is proposed to be located?

24 MS. TOWNSEND-HOUGH: On the plant site.

25 MS. GULESSERIAN: Okay. And did you

1 analyze that in the FSA? Did you describe this
2 process or analyze it in the FSA?

3 MS. TOWNSEND-HOUGH: Yes.

4 MS. GULESSERIAN: Okay, could you show
5 me where?

6 MS. TOWNSEND-HOUGH: 4.13-10.

7 MR. BABULA: The second full paragraph.

8 HEARING OFFICER CELLI: While you're
9 looking that up, can you give some sense of how
10 much more there is, Ms. Gulesserian?

11 MS. GULESSERIAN: Less than --

12 HEARING OFFICER CELLI: I note that
13 there's some intrepid character who has managed to
14 get himself on the phones listing. So Mr. Call-in
15 User Number 12, I know you're out there. Hang in
16 there, we'll get to you.

17 I should say for the record, Mr. or
18 Ms. Call-in User Number 12. We'll find out.

19 Any further cross?

20 MS. GULESSERIAN: Could you please read
21 me, do you have it in front of you what you're
22 reading regarding your analysis.

23 MS. TOWNSEND-HOUGH: Revised figure 7 in
24 the Beacon project design refinement, attachment
25 6, page 8, presents a flow diagram of the

1 management and treatment of HTF-affected soil
2 proposed by the applicant.

3 Spills of HTF at Beacon would be cleaned
4 up within 48 hours, and the contaminated soil
5 would be placed in the staging area of the LTU and
6 covered with plastic sheeting.

7 Samples -- how far do you want me to go?

8 HEARING OFFICER CELLI: There was your
9 plastic sheeting, Ms. Gulesserian, that she just
10 read for you.

11 MS. TOWNSEND-HOUGH: Yeah, and I don't
12 have the size of the plastic sheeting --

13 MS. GULESSERIAN: Thank you very much.

14 MS. TOWNSEND-HOUGH: -- in there.

15 MS. GULESSERIAN: And so the
16 contaminated soil would be placed in a staging
17 area of the LTU and covered with plastic sheeting.

18 Is that your analysis that you're referring to?

19 MS. TOWNSEND-HOUGH: Yes.

20 MS. GULESSERIAN: Okay. Is there any
21 other analysis in the FSA of the staging of
22 hazardous soils?

23 MS. TOWNSEND-HOUGH: It's in soils and
24 water; it's in the appendices --

25 MS. GULESSERIAN: Okay.

1 MS. TOWNSEND-HOUGH: -- E, F and H. I
2 know it's in the Water Resources waste discharge
3 requirements also.

4 MS. GULESSERIAN: I have no further
5 questions.

6 HEARING OFFICER CELLI: Thank you. Any
7 redirect?

8 MR. BABULA: No.

9 HEARING OFFICER CELLI: Thank you. With
10 that, we have received all of the documentary
11 evidence from all of the parties, it's been
12 received into evidence. We've heard from all of
13 your witnesses on all contested areas.

14 We've received all the evidence on
15 alternatives, biological resources, cultural,
16 soil, hazardous materials, waste management.
17 Project description, we did take that in.
18 Transmission system engineering and visual
19 resources.

20 At this time the record is closed. I'm
21 happy to say that we were able to close the
22 evidentiary record in one day. I want to thank
23 the parties for your efforts. I know it wasn't
24 easy, but I do appreciate everybody's working hard
25 to make it happen.

1 The first thing I have to do now is ask
2 if there is any further public comment to be
3 added. If there are any members of the public who
4 are present and wish to make a comment. I don't
5 have any more blue cards. A showing of hands? I
6 see no showing of hands.

7 Now I'm going to go back on the line and
8 I'm going to un-mute call-in user number 12.
9 Hello, call-in user number 12 on the telephone,
10 can you hear me? Whoever's on the phone if you
11 wouldn't mind speaking up, please.

12 Is there anyone on the phone line at
13 this time? They went away, they hung up. I
14 didn't mean to scare them.

15 (Laughter.)

16 HEARING OFFICER CELLI: Okay. So,
17 there's no further public comment. The
18 evidentiary record is closed.

19 The parties' opening briefs on all topic
20 areas must be filed no later than 3:00 p.m. on
21 Monday, April 19, 2010.

22 Reply briefs must be filed no later than
23 3:00 p.m. on Monday, May 3, 2010. Copies must be
24 provided to the Committee, the Hearing Adviser and
25 those on the proof of service and mailing lists.

1 The parties shall also provide
2 electronic copies of the above-referenced filings
3 to the Hearing Officer via email in Microsoft Word
4 format.

5 Now, I want to make a couple of things
6 clear. It's really incumbent upon the parties to
7 frame the issues. So I don't want to hear any
8 whining about I didn't tell you what to brief.
9 You know what the issues are and you're going to
10 brief them.

11 But I'm going to give you some hints.
12 We talked about visual and that was really between
13 staff and the applicant. You're going to want to
14 give the Committee a clear understanding of what
15 is a significant adverse impact with regard to the
16 brightness and the contrast, such that it supports
17 a finding of an unmitigable significant impact.
18 We're going to need to know what that is. We're
19 going to need to home in on that.

20 There was discussion in the transmission
21 system engineering about the 250 megawatts impacts
22 on the LADWP's T-lines. And there was some
23 discussion about changes in the nomenclature. I'm
24 not all that interested in that but I am
25 interested in addressing the questions that were

1 raised by CURE with regard to the impact studies.

2 Water issues, I suppose, will be framed
3 by CURE. In bio there was discussion for need of
4 surveys and adequacy of mitigation. Ms.
5 Luckhardt, I'm going to ask the applicant to
6 respond to the comments from Lorelei Oviatt from
7 Kern County in a brief. You know what I'm talking
8 about.

9 Hazardous materials, there was much
10 discussion about legal requirements with regard to
11 sampling spills at the location and so forth. I
12 think that it might behoove the parties to perhaps
13 touch upon the regulatory underpinnings of hazard
14 materials management.

15 A lot of, let's put it this way. A lot
16 of the issues I think that were raised by CURE
17 were responded to by the various parties as, well,
18 there's a regulatory scheme that covers this, or
19 there's a LORS or something like that.

20 I think if there's any open-ended
21 questions about how hazardous materials, waste is
22 going to be managed, then you better be able to
23 point to the LORS that you're relying on, or the
24 regulatory scheme that covers that question.
25 Mostly in the context of hazardous materials.

1 And then, of course, if there are any
2 questions that are left open with regard to -- if
3 there are any conditions of certification that
4 address questions that were raised by the
5 intervenors that I would appreciate it if you
6 could direct our attention to those conditions.

7 Other than that, I need to -- I'm going
8 to cancel the court reporter for tomorrow because
9 we got through it tonight. Thank you very much
10 for staying late. We do appreciate that. I want
11 to thank all of you for staying late.

12 There will be no need for a WebEx phone
13 number or calling in on WebEx, so we will not have
14 a WebEx meeting tomorrow. This is the end of our
15 evidentiary hearings.

16 And so with that, what we'll do next is
17 I'll hand it over to Chairman Douglas, who will
18 adjourn the meeting.

19 MR. BABULA: Can I just make a quick --
20 it's really quick.

21 HEARING OFFICER CELLI: Did I forget
22 something?

23 MR. BABULA: No, no. I just wanted to
24 thank our Project Manager Eric Solorio. I think
25 that this project -- I don't think -- this has

1 been a two-year process, and I'm sure the
2 applicant won't be sending him a Christmas card,
3 but this project it looks a lot different from
4 what came in. And I think if anybody has any
5 questions about whether there's agency capture
6 among the Commission, they take a look at what
7 came in and what it looks like now, the FSA,
8 there'll be some tremendous changes.

9 And most of that is because of the hard
10 work of Eric and his ability to organize our team
11 and get this information out there. And his
12 diligence in pursuing it. So I just wanted to
13 publicly thank him for that.

14 HEARING OFFICER CELLI: We join in that.

15 In fact, didn't they let you go for a little
16 while there, and put you back on.

17 MR. SOLORIO: It's on a daily basis.

18 (Laughter.)

19 HEARING OFFICER CELLI: Chairman.

20 PRESIDING MEMBER DOUGLAS: All right,
21 well, I'd like to thank everybody who has hung in
22 there for a very long day and we're adjourned.
23 Thank you.

24 (Whereupon, at 9:26 p.m., the hearing was
25 adjourned.)

CERTIFICATE OF REPORTER

I, MARTHA L. NELSON, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, 2010.

s/s Martha L. Nelson

MARTHA L. NELSON,
AAERT CERT